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No. 41

## House of Representatives

The House met at 12:30 p.m. and was called to order by the Speaker pro tempore [Mr. GOSS].

### DESIGNATION OF SPEAKER PRO TEMPORE

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

WASHINGTON, DC,

March 6, 1995.

I hereby designate the Honorable PORTER J. GOSS to act as Speaker pro tempore on this day.

NEWT GINGRICH,

*Speaker of the House of Representatives.*

### MORNING BUSINESS

The SPEAKER pro tempore. Pursuant to the order of the House of January 4, 1995, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member except the majority and minority leader limited to not to exceed 5 minutes.

The Chair recognizes the gentleman from Georgia [Mr. NORWOOD] for 5 minutes.

### REPUBLICAN LEGAL REFORM PACKAGE

Mr. NORWOOD. Mr. Speaker, I rise today in support of the common sense legal reforms we will consider this week. We have the opportunity this week to restore sanity to our legal system. The irresponsible costs added to our Nations' economy by fear of lawsuits must be curtailed. Our reforms add simple principles of common sense to the legal system and will cut down the tremendous expenses Americans face every year in legal fees and increase costs in goods and services.

Our reform package is based on four simple principles. First, we set up a responsible loser pays provision that makes settlement an attractive alternative. The loser pays provision will reduce the urge for lawyers to take suits to trial in an effort to win extravagant damage amounts. Loser pays will lessen the load on our judicial system, and will in no way harm those seeking legitimate claims.

The next reform is to place tighter restrictions on the use of expert witnesses. Our bill will make sure that expert witnesses are in fact experts. It will require the use of scientific theories to be scientific and we will cut down the use of rent-a-scientists. Mr. Speaker, we are not hurting consumers by making expert witness rules stricter, we are helping consumers by limiting the costs that are passed on to them by business, that have to defend themselves against questionable experts.

Our bill will limit the liability of a defendant to a proportional share of their fault in noneconomic damages. One of the most destructive problems with our legal system is joint and several liability. Our current rules allow litigants to shake down wealthy defendants for far more damages than they should ever be responsible. It is just plain wrong for the Gates Rubber Co. to have to defend themselves against millions of dollars in damages when a chicken processing plant burns down—especially when that plant had no fire alarms, no sprinkler system, and padlocks on the fire doors. Mr. Speaker, clearly any responsibility owned by Gates is minimal. Our bill will see to it, that responsibility is proportionate.

The fourth principle our reform package is based on is limiting punitive damages. There is clearly a place for punitive damages in our legal system in cases where defendants intended to

cause harm to others or acted with a flagrant indifference to the safety of others. But there must be a limit put on punitive damages, particularly when they are imposed on defendants in a reckless manner by vindictive juries—when this happens, we all pay. At some point, punitive damages move from reasonable to ridiculous. In our bill, that point is \$250,000 or three times the amount of economic damages whichever is greater. After all, no one in this country should have to check on their liability insurance before serving coffee.

I would encourage my colleagues to consider one further reform as we act on this legislation. Mr. Speaker, if we are to ever contain health care costs in this Nation, we must limit the punitive liability faced by manufacturers and sellers of drugs or medical devices—if those drugs or devices are approved by the FDA. Once FDA approval is legally met, a manufacturer or seller should not face punitive damages. If we do not take this important step forward, health care costs will continue to skyrocket, and the quality of care our Nation receives will be lacking.

Mr. Speaker, our legal reform package is not about hating lawyers. It is about reforming the system to allow lawyers to act more responsibly as a profession. This legislation is not about hurting consumers—in reality, our reforms will remove some of the costly burden consumers have to pay in the marketplace everyday as a result of frivolous lawsuits, without limiting their ability to seek legal remedies when they feel they have been wronged. Mr. Speaker, our legal system is out of control, and it goes far deeper than million dollar cups of coffee, it is the billions of dollars in liability our economy is forced to absorb every year. I urge my colleagues to make these reasonable reforms and resist the pressure to back down, our economy and

□ 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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our Nation needs these reforms—please don't back down now.

#### REPUBLICAN LEGAL REFORM IS A SHAM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Oregon [Mr. DEFAZIO] is recognized during morning business for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, let me start by saying I am not an attorney. I am one of probably a minority in this Congress who is not an attorney.

But I have taken recourse to the courts. I live in the Pacific Northwest. When a scam was run on the Northwest called WPPSS, Washington Public Power Supply System, that promised us five nuclear powerplants to produce power without cost for only \$4 billion, and it ultimately cost \$10 billion, and all but one was never completed.

I launched a ratepayer lawsuit in court. On the other side of the courtroom were a couple of hundred lawyers.

Now, under this bill, ratepayers will not be suing anymore because they will have to pay for those 200 high-priced corporate lawyers on the other side of the room. I have 1 lawyer, a local guy, pro bono, me, and 26 other citizens. That will not happen anymore under the Republican view of what is wrong with the legal system in America.

There are problems, and the American people are frustrated, but they have perverted that frustration into a bill that is an abomination. The Republican spinmeisters have worked overtime for this week's production, and it is a production. They pretend this is a relief for Main Street America, for people who are overburdened by litigation. But with breath-taking bait-and-switch, they produced a bill beyond the dreams of the most corrupt corporate swindlers in this country.

It is payback and payoff time, America.

First we have the Corporate Intimidation Act. I have already explained that. It is called loser pays. If the ratepayer wants to go to court and sue a multi-billion-dollar corporation: "Hey, check your checkbook. If you can afford to pay for all the lawyers they trot into the court, go right ahead." I do not think there will be too many lawsuits filed by ratepayers anymore, but maybe that is the objective of this proposed bill.

It is also a blank check for bunco artists. We know that Wall Street is suffering. They are suffering because of litigation, those poor people on Wall Street, those poor thousand-dollar-an-hour poor lawyers. You know, it is tough.

Well, they have a new defense now, and it is called, "I forget." And under this bill, the one coming up on Wednesday, they can say, "Well, gee, we would have disclosed those defects in our prospectus for you, but I forget." So, hire a thousand-dollar lawyer; he forgot. That is now a defense.

But this is for Main Street America, remember that, this is for Main Street America. Sure, it is for Main Street America. Who buys those securities, who gets defrauded? There will not be another Charles Keating under this bill, thank God there will not be another Charles Keating defrauding the taxpayers of millions of dollars. It will not prevent the fraud, but it will prevent the litigation against Charles Keating. That is great. That resolves the problem with the legal system in America.

This is just what main street needs at a time of the bankruptcy of Orange County, the Barings Bank, speculation going on wildly. When your IRA disappears or your little pension plan, because of a bunco artist, don't worry, you will not be able to go to court anymore. That is what this bill is all about.

Finally, we have the tort reform. We have heard a lot of States rights from that side of the aisle. This will take States rights and rip it into shreds; 200 years of State precedents in tort reform will be overruled by the Federal Government only when it protects corporate interests.

You know, there will be a 15-year ban on litigation to get any product, any product, unless a business is harmed, so they will be able to go in and sue for commercial losses. Your wife, husband, mother, son, is killed by a defective product? After 15 years, tough luck. Your company loses some money with the defective product, after 15 years? Welcome to court.

This is for Main Street America? No, it is not for Main Street America. This has one very simple thing underlying it. It used to be that all men and women were equal before the law. Under the new Republican proposal, all dollars are equal before the law, and the corporations have a lot more of them than we do. That is what this is all about, in, many, many ways that are yet to be told. Watch the debate this week, listen, pick up the covers, look underneath. This is not for main street. It is for Wall Street.

#### DANVILLE HOUSING AUTHORITY: DEMOLITION OF CARVER PARK

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Illinois [Mr. EWING] is recognized during morning business for 5 minutes.

Mr. EWING. Mr. Speaker, I come here today to discuss an example of the stranglehold on our society by the Government in hopes that by discussing it we can find a better way outside of extremely big government and bureaucracy to address some of our problems.

What is the problem I want to talk about? It is a problem dealing with the Carver Park Housing Authority project in Danville, IL. This poses a very immediate and serious risk to both human health and safety.

The project itself was poorly built in an area, in a flood plane, and the subsoil is unstable and has caused considerable damage to these public housing buildings.

Some years back the project was abandoned and has been for some years totally deserted. But the local housing authority cannot get permission to tear it down.

The city of Danville has even come in and condemned the property, and yet the project stays there, standing there as a beacon, really, of poor government and poor management, costing the city, costing the Federal Government, costing the taxpayers for years and years to keep this crime-ridden area as safe as possible for the citizens of Danville.

We know now what the problem is, but why? Why has this Government not come through and allowed the local housing authority to tear this down? Well, the Department of Housing and Urban Development has failed to authorize the demolition of these structures because of bureaucratic redtape.

To remove the 130 units in this complex, Federal law requires that the Federal Government must replace these 130 units. But Danville does not need these units. They have no demand for these public housing units. But they do need another type of housing unit, section 8 housing. But they cannot get that because they have these other units on the books.

In addition, the Danville Housing Authority has requested section 8 housing several times, but to no avail.

Now, there is a solution to this problem, and we are probably going to take care of it in the next week when we take up the title III of section 302 of the appropriations. There, we are going to allow for specific language which will allow the Department to give waivers so that under 200 units can be destroyed without replacing them.

But this is only a stopgap measure, only a partial solution. But with this, HUD will be allowed to bypass their regulations and rules and tear down these abandoned, crime-ridden structures in this housing development.

But I believe the American taxpayers are really tired of Government that is so bureaucratic, so tied up with its own rules and regulations that we have to pass additional legislation to do something that common sense dictates we should have done.

Now, the long-term solution is that we should be able to devise here in this body a type of government that is not so bureaucratic, big government that is not so big, government that is responsive to the taxpayers and to local government needs.

The bureaucratic arm of this Government, in this case the housing and human services department, should have been able to use enough common sense to come forth with legislation, enactments which would give them the discretion to take care of the matters such as this.

I hope that we will pass the language on the appropriations bill next week and be able to move this particular incident out of the way. But we ought to learn from it.

#### FUTURE OF AMERICA'S WELFARE SYSTEM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Illinois [Mr. DURBIN] is recognized during morning business for 5 minutes.

Mr. DURBIN. Mr. Speaker, the Congress of the United States is involved in a very important debate on the future of America's welfare system. Both parties have come to the understanding and agreement that the current welfare system is, by and large, a failure. It is a system which is loathed not only by the people who are in the system, but certainly by taxpayers, who see a great deal of waste and misguided policy.

Unfortunately, this debate took a bad turn on Capitol Hill several weeks ago when my Republican colleagues announced one of the first casualties in this debate would be the Federal nutrition programs, programs which have been tried and tested over decades and which have been proven to be dramatic successes.

I went back to my district this last weekend and on Saturday had a town gathering in Quincy, IL, inviting people from the general area to come and tell me their experiences with three specific programs. I would like to share them with you this afternoon.

I think these personal human stories tell a lot more about this welfare reform debate than all the books and statistics and all the high-flying political speeches that you are going to hear in the next several weeks.

The first little fellow I met was named Reed. Reed was the cutest little 7-month-old you could imagine, 20 pounds, bouncing up and down, happiest kid I could ever remember seeing.

His mom told the story about how Reed was not always this way, how he got off to a slow start in life. They could not find an infant formula that worked for him. Finally, they did. A pretty rare commercial infant formula which Reed could tolerate and, in fact, grow very well on.

That formula was provided to that working mother, who is struggling to get by on a low-wage job, by the WIC Program, a Federal program that steps in with low-income families and gives them a helping hand. If you could have seen the smile on Reed's face and his mother's face as they told the story, you can understand that the concept of block-granting these programs and cutting funds for them will cut off children just like that, forcing the mothers of Reed and others across the country into a welfare system that we are trying to pare down.

And then, of course, we had another young lady there, a mother of a little

girl named Shay. She had three children. They were in day care homes. Now that is different from the day-care centers that you might drive by. In my part of the world, people have day-care services in their basements, in family rooms, and they are licensed by the State. They provide low-cost day care for mothers who otherwise could not work without it.

Well, she had three children in day care. The Federal Government helps provide for those in day care about \$4 a day to feed the kids, a little snack and a little lunch during the course of the day.

One of the proposals before Congress is to eliminate that altogether. What this mother told me was that while she was off working 40 hours a week in a fast food restaurant, working several days a week just to pay for day care, she said \$4 a day does not sound like much, but it is \$15 per week times 3 kids is 180 bucks per month. She said, "Congressman, think about what I am earning for a living, \$4 or \$5 an hour is not much, and the impact it is going to have on me. I need to have affordable day care to stay out of welfare."

Finally, one of our school superintendents came in and told a story about school lunch. It is nothing short of amazing to me that our Republican friends now want to go after the school lunch program. I have been around here for a few years, and I cannot recall scandals, massive scandals, and waste in the bureaucracy. This is a program administered at the local level that works.

A school superintendent came in to tell the story of a little boy about 10 years old. Several years ago his mother went out for groceries and never came back. That left him with his two brothers and his father alone. Because his father works long hours, it became his burden to basically raise his little brothers.

They come to school each day, those three kids, and the superintendent told me, he said,

Congressman, make no mistake about it, it is the best meal of the day for them. It may look like just a plateful of spaghetti and pizza to somebody walking through the cafeteria, but these kids wolf it down. Sometimes we have to bring them down to the cafeteria for crackers and milk to keep them going.

So let us not get caught up in all the statistical debate and forget the real people involved. We have got to keep good nutrition programs that are working in place doing their job. We cannot have a strong America without strong children and strong families.

#### THE EXHAUSTIVE CONCORDANCE TO THE UNITED STATES CONSTITUTION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Tennessee [Mr. WAMP] is recognized during morning business for 2 minutes.

Mr. WAMP. Mr. Speaker, I have happily discovered that many of my colleagues, like I did campaigned with a copy of the U.S. Constitution in our pockets. As one who strongly believes in government strictly according to constitutional principles, I make our Government's defining document the object of constant study. In fact, before almost every speech I give on the House floor, I consult the Constitution to remind myself of, and clarify, the underlying constitutional principle involved.

That is why I am so happy one of my constituents has written and published "The Exhaustive Concordance to the United States Constitution." The book is a valuable treasure for avid constitutionalists like myself.

Through the generosity of this book's editor, Dr. Dennis Bizzoco, of Chattanooga, TN and its publishers, an individual copy for each Member of Congress—Senators, Representatives, Delegates, and the Resident Commissioner—is being made available free of charge. I am happy to report to my colleagues their copy was delivered to them this morning through inside mail.

On the special copy Dr. Bizzoco presented to Speaker GINGRICH last Friday, these words of Thomas Jefferson were inscribed, which remind us all of the power of the U.S. Constitution: "In questions of power let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution."

I hope that the Members of Congress will use their copy of "The Exhaustive Concordance to the United States Constitution," and if you find it of value, please let Dr. Bizzoco know you appreciate his donation to our public debate by dropping him a short note.

Mr. Speaker, I close by reminding the Nation that this Constitution demands a limited Federal role. This Constitution is the roadmap of good government, and through the 10th amendment it says that issues not clearly defined as being the responsibility of the Federal Government should be returned to the States.

We trust the State officials, the local State officials, with these decisions. We want to give them the money and let them make the decisions on how to spend that money so these big Federal bureaucracies that are inefficient and unfair do not continue.

#### THE PROPOSAL TO INCREASE THE MINIMUM WAGE

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized during morning business for 1 minute.

Mrs. CLAYTON. Mr. Speaker, I rise to urge early hearings on the proposal to increase the minimum wage.

The Speaker has promised to have hearings scheduled. Those hearings should be scheduled soon.

We are slashing the school lunch and breakfast program.

We are removing thousands of women, infants, and children from the WIC Program.

We are cutting education programs, and programs that move teenagers from school to work, including complete elimination of the Summer Jobs Program.

We are slicing away at public housing support programs.

And, while telling the poor they must work to eat, we have yet to give any consideration to a modest increase in the minimum wage.

Mr. Speaker, somewhere in these first 100 days, we should find time to give the millions of minimum wage workers a hearing on the subject to their wages.

If we want to force citizens to work to eat, let us provide a livable wage so that they can earn enough to feed themselves.

#### PROGRAM CUTS FOR THE POOR TO FUND TAX CUTS FOR THE WELL-TO-DO?

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from Colorado [Mr. SKAGGS] is recognized during morning business for 5 minutes.

Mr. SKAGGS. Mr. Speaker, last Thursday the House Appropriations Committee met for 6 or 7 hours to prepare for floor action a bill that will cut some \$17 billion from this year's appropriations. It is a lot of money. It can easily pass as merely a statistic in the debate going on in this country these days.

But in those \$17 billion of cuts there is a story to be told. That amount represents \$1 out of every \$7 that this country was going to expend this year on programs to help the poor, those living below the poverty line. And that \$17 billion represents \$1 out of \$100 that this Government was going to be spending on everybody else. One-seventh of our budget to help the least advantaged in this country, one one-hundredth of the budget to help the most advantaged in this country.

And you might ask, why? Why would we be doing that to programs like Women's, Infants and Children, early childhood nutrition programs, which clearly more than pay for the expenditures in better health, better learning, better productivity over a lifetime, and pay for themselves at a ratio of 4 or 5 to 1? Why would we be cutting prenatal care, absolutely essential to prevent low-birthweight babies and early childhood disease? What is the economy to be accomplished there?

Why go after safe schools programs that are critical in our urban neighborhoods, and why cut substantially into the low-income energy assistance program so critical to poor and largely

older Americans in the colder parts of this country?

Well, the only answer we can find for taking from the disadvantaged disproportionately than from the advantaged is the tax cut that the majority wishes this Congress to pass, the benefits of which will also accrue largely to the best-off in this society, the top one-fifth, which was the only group in this country that enjoyed real increases in their standard of living during the eighties and early nineties.

This is just the beginning. Soon we will have proposals coming to the floor that will also cut other critical support programs, whether it is child care or food stamps.

I wanted to get some sense of what this was going to mean to the people in my district. I had a meeting this last Saturday morning at the Boulder Day Nursery, in Boulder, CO, where mothers, fathers, and kids came together to try to explain what this complicated, but ultimately critical, interconnected set of programs, from early childhood nutrition to day care to prenatal care to AFDC, had meant in their lives. People who do not want to be dependent on anybody else, who want to get on their feet, who want to be productive citizens, but who, for various reasons—husband and father who took a walk, a tragedy—had to rely on some of these programs.

I will be speaking further about what a central role this kind of support means, not because these people want to stay on the dole, but because they want to make something of themselves, become taxpayers, become productive citizens, and need a sense of community from all of us to get through some difficult times in their lives.

#### RECESS

The SPEAKER pro tempore. There being no further Members listed for morning hour, pursuant to clause 12, rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 1 o'clock p.m.) the House stood in recess until 2 p.m.

□ 1400

#### AFTER RECESS

The recess having expired, the House was called to order by the Speaker.

#### PRAYER

The Reverend Michael B. Easterling, senior pastor, Madison Avenue Baptist Church, New York, NY, offered the following prayer:

Let us pray:  
Lord of all nations, we give You thanks this day for life itself and for the promise of Your faithful guidance and care. You have blessed us in innumerable ways and You have placed in our hands the responsibilities of caring for our world and caring for one another.

May we assume these great responsibilities with conscientiousness and always with great humility.

As we undertake these tasks, will You give to us, Your servants, that wisdom and understanding and compassion we must have if we are to be successful.

Lord of life, lead us in all of our endeavors, that Your truth might be found, that justice and peace might be realities, and that Your eternal will might be done.

In Your holy name we pray. Amen.

#### THE JOURNAL

The SPEAKER. 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. Will the gentlewoman from Washington [Ms. DUNN] come forward and lead the House in the Pledge of Allegiance.

Ms. DUNN of Washington 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.

#### SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

#### A WELCOME TO REVEREND EASTERLING

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

Mr. McDERMOTT. Mr. Speaker, on behalf of my colleagues in the House of Representatives I am delighted to welcome as our guest Chaplain, the Reverend Michael Easterling, senior minister of the Madison Avenue Baptist Church in New York City.

The Reverend Mr. Easterling has served the Madison Avenue Church with great distinction for 10 years, a church that has provided a variety of services to his community located just a few blocks from the Empire State Building. His leadership has meant much to the neediest of people and together with the members of the church, the message of religion has been translated into deeds of justice and mercy to his community.

Mike Easterling and I were classmates together at Wheaton College in Illinois and I have been an admirer of his dedication and his commitment in his ministry. Also, it should be mentioned that Mr. Easterling and our own

Chaplain, Jim Ford, served together as cadet chaplains at the U.S. Military Academy at West Point, NY.

Thank you, Mike, for your prayer today and best wishes in the good work that you do together with the people of Madison Avenue Baptist Church.

#### REPUBLICAN CONTRACT WITH AMERICA

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

Mr. CHABOT. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget. We kept our promise.

The contract goes on to say that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; Government regulatory reform—we kept our promise; common-sense legal reform to end frivolous lawsuits—we are starting this today;

And still to go: Welfare reform to encourage work, not dependence; family reinforcement to crack down on dead-beat dads and protect our children; tax cuts for middle-income families; Senior Citizens' Equity Act to allow our seniors to work without government penalty; congressional term limits to make Congress a citizen legislature.

This is our Contract With America.

#### SCHOOL SAFETY AND SCHOOL LUNCH

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

Mr. DINGELL. Mr. Speaker, I was delighted to hear the last person in the well to address the subject of children. I would like to again address that today.

Last week, my colleagues, we discussed the question of cuts in the School Lunch Program. Today we find that my Republican colleagues propose to zero out the Drug-Free Schools Program and also the Safe Schools Program. This tends to show me that my Republican colleagues know the cost of everything and the value of nothing, because the greatest trust and the greatest treasure that this Nation has is our young people.

To have them in schools which are free of drugs, which are safe, and to see to it that those who have no recourse to adequate nutrition and food supplies at home, to see that they have an adequate school lunch is indeed one of the ways that we not only nurture our

greatest treasure, but we look to the future of this country.

#### REAL REFORM THE ONLY TRULY COMPASSIONATE THING TO DO

(Ms. DUNN of Washington asked and was given permission to address the House for 1 minute and to revise and extend her remarks and include extraneous material.)

Ms. DUNN of Washington. Mr. Speaker, let us talk about compassion, because some of our Members seem to have a distorted sense of what that term means when it comes to our Nation's failed welfare policies.

Is it compassionate to continue with a status quo system that for three generations has stripped women of their dignity? Republicans say no. The current system limits the ability of poor women to seek gainful work and condemns those women and their children to a life of hopelessness caught up in the welfare cycle.

That is not compassion, Mr. Speaker. It is destructive to women, to children, and to families.

In fact, because of the disincentives that exist in the current system, many welfare mothers will never be married.

Mr. Speaker, let us not defend the status quo. Instead, let us end a system that traps children in lives of higher rates of domestic abuse and violent crime and inadequate educational opportunities. Let us transform welfare and redefine compassion to mean stronger families, domestic tranquility, and good jobs.

#### SCHOOL LUNCH PROGRAM

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

Mr. UNDERWOOD. Mr. Speaker, the majority decided again last week not to protect the School Lunch Program, but to include it in a block grant and let the children compete for dwindling Federal dollars against other needy groups.

The majority's vision of America would have schoolchildren fight for their lunch money with programs for the elderly, disabled veterans, and indigent mothers. There is a new bully in the schoolyard. This is a fight where everyone loses. And all this while funding tax breaks for the wealthy. Mr. Speaker, I believe that the majority has extended class warfare into the classroom, but instead of the haves and have-nots, it is the well-fed versus the hungry.

Just as important as military readiness is classroom readiness—the readiness of schoolchildren to learn because their stomachs are not empty. Just as important as a balanced budget amendment is a balanced lunch law, ensuring a nutritious hot lunch to poor school kids.

Let us support classroom readiness and a balanced lunch law.

#### THIS IS NOT JUDGE WAPNER'S COURT

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

Mr. HAYWORTH. Mr. Speaker, the United States legal system should not imitate Judge Wapner's "People's Court." Our entrepreneurs should not be threatened by organizations like 1-800-LAWYER that encourage American citizens to sue everyone and anyone with little or no reason.

Right now, our legal system is well intentioned, but is not structured with any common sense. We have the chance to provide this common sense with lawsuit abuse and product liability reform.

We cannot continue to allow trial lawyers to enrich themselves at the expense of well-intentioned citizens.

We have citizens in this country afraid to practice their business or produce certain products for fear of being sued. We have Americans who are not getting replacement heart valves because the company that manufactured them was afraid of being bankrupted by an enormous lawsuit.

Let us put an end to out of control litigation and get the legal system in this country back on the right track, as we continue to enact our Contract With America.

#### CONTRATULATIONS TO THE PENGUINS FOR A TITLE

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

Mr. TRAFICANT. Mr. Speaker, Youngstown State University, the Penguins, division I, double A, national champion football team, 3 of the last 4 years in a playoff, ladies and gentlemen, were received today at the White House by President Clinton. What a beautiful day for our valley and what a beautiful day for the top football coach in all of America, Jim Tressel, coach of the Penguins.

The greatest record in the last 5 years of any program in the country, led by All-Americans Lester Weaver and Leon Jones, Chris Samarone of Cheney, in Youngstown, OH, Randy Smith, and great quarterback, Mark Grungard, of nearby Springfield Local.

The Penguins defeated Marshall University 2 of those 3 years and defeated Boise State last year.

Ladies and gentlemen, this is the finest program in America. They are typical of the fighting spirit of the people of the Mahoning Valley in Ohio who lost the steel mills but their tenacity is never quit.

Hail to Jim Tressel and the Penguins. And at 3:30, Members, there will be a little reception in 2253. Come on by. The best in America.

### NO DEFENSE FOR FAILED WELFARE SYSTEM

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

Mr. JONES. Mr. Speaker, it is time to tell the truth about our welfare system. It is not the system that it was designed to be. It is not temporary help for those who are down on their luck. It is a bureaucratic nightmare that has trapped generations of Americans into a cycle of dependency. It is no secret that the welfare system has failed miserably. It does not provide a hand up. It is nothing more than a handout. Americans across the country, including those who receive welfare, are sick of the failed system. We should face the problem and fix the system. Republicans have offered serious proposals to reform welfare, but those on the other side of the aisle are offering nothing more than distortion in a desperate attempt to defend a failed system.

That is not what the American people elected us to do. They elected us to fix a broken system. It is time to reform the welfare system.

### REFORM OF THE LEGAL SYSTEM

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

Mr. DEFAZIO. Mr. Speaker, the Republican image meisters and spin artists worked overtime for this week's production in Congress. They tapped a concern of average Americans over the growing litigiousness of our society, but with a breathtaking bait and switch. They have produced a bill beyond the dreams of the most corrupt financial swindler or the most irresponsible corporation. They call it the Common Sense Legal Reform Act.

In reality, it is the corporate dollar liability and litigation shield act.

No. 1, the loser pays. What does that mean? It means if you are an average citizen and you have been aggrieved by an exploding Pinto, if you wanted to sue Ford, you have to be ready to pay for all of Ford Motor Co.'s legal costs. Better think twice before you go to court to sue about an injury with products.

A blank check for bunko artists and new defenses for Wall Street. They forgot to inform you when you invest your pension in a bad deal. The new defense is, I forgot. It is actually written in the bill. It is almost a joke. I forgot. Thousand-dollar-an-hour lawyers and Wall Street forgot.

This is not for main street. It is for Wall Street.

### WELFARE: A BETTER WAY

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

Mr. NORWOOD. Mr. Speaker, someone once defined the Federal welfare

system as the result of Americans wanting—in the worst way—to help those who have fallen behind.

There must be a way to help people without trapping them in dependency, robbing their self-respect, suffocating their initiative, and paving their way to lives of despair, illiteracy, and illegitimate behavior.

That better way is now working its way through the deliberative legislative process here in the House of Representatives and will be before this body in the next few days.

Foremost, this new approach incorporates the realization that the Federal Government is incapable of undertaking the experiments to produce a new welfare system.

To fulfill that role, we would designate the States as laboratories of innovation, reform, and effective transformation of the welfare system.

We also would eliminate an expensive, unnecessary layer of Federal bureaucracy whose role has been to look over the shoulders of the States and impose a one-size-fits-all straitjacket to restrain administrators for searching for better ways to deliver help to those in need.

### URGING MEMBERS TO STAND TOGETHER AND PREVENT REDUCTION OF ENERGY ASSISTANCE TO THE POOR

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

Mr. POMEROY. Mr. Speaker, the temperature reached 15 below zero in North Dakota last night. Unfortunately, the discomfort of the cold was made much worse by the anxiety caused by the news that all of the funds for home heating assistance to the poor had been eliminated by the House Committee on Appropriations late last week.

Thousands of households in my State need help from time to time with high bills brought on by severe winter weather. Most receiving assistance have incomes below \$8,000 a year, are elderly with disabilities, or families with young children under the age of 5 in the household.

How in the world could Members of this body eliminate this critical program in order to fund tax cuts for the rich? That is a trade-off that does not make any sense. Maybe they just do not understand. After all, the temperature in Atlanta, GA, today is going to be 75 degrees warmer than in North Dakota.

I call on every Member of this body, Republican and Democrats, who represent citizens coping with tough winters and high heat costs, to stand together and not leave the poorest of the poor out in the cold.

### ANOTHER HOLE PUNCHED IN THE CONTRACT WITH AMERICA REPRESENTS A GAP PUNCHED IN AMERICA'S CONSTITUTION

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

Mr. WATT of North Carolina. Mr. Speaker, this is a copy of the Constitution of the United States. I want Members to know that in this body it is under siege. Every time our Speaker shows up here and punches a hole in his laminated Contract With America, we can be almost guaranteed that they are punching another hole in the Constitution of the United States.

Last week, it was the fifth amendment of the U.S. Constitution that they punched a hole in systematically; before that, the fourth amendment, habeas corpus, and division of responsibility between the executive and legislative branch.

I will be back here to tell Members every time they do it again. Do not be fooled when they punch that hole in the Contract With America. It is another notch, but it is another gap in the Constitution of the United States.

### THE CHICKENS ARE COMING HOME TO ROOST

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

Mr. VOLKMER. Mr. Speaker, "the chickens are coming home to roost." that is an old saying that applies to what is currently going on in Congress. Republicans are clearly showing who they represent.

Mr. Speaker, the Republicans who won control of the House by a majority of 15 votes are using this slim margin to dismantle all Government programs, even compassionate programs to help needy Americans.

Mr. Speaker, little of this was spelled out in the Contract on America and none of it was discussed with the American people. Few Americans, if any, knew what the Republicans had up their sleeve when Republicans were sworn in on January 4.

Mr. Speaker, all this changed last week however, and the American people now know what the Republicans were hiding up their sleeve when Republicans had to make cuts in programs like school lunches, heating assistance for low-income senior citizens, reductions in hospital and health care for veterans, caps on student loans, as well as other cuts in order to finance a \$722 billion tax break for special interests.

Mr. Speaker, last week the chickens came home to their roost. Already, the American people are upset and by large margins disagree and reject the fine print in the shortsighted and mean-spirited Republican Contract on America.

#### IN OPPOSITION TO THE NUTRITION BLOCK GRANT PROGRAM

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

Mr. WARD. Mr. Speaker, I rise today in opposition to the nutrition block grant program, which, if enacted into law as the Republican contract seeks to do, will devastate our Nation's children. Despite the rhetoric we hear about creating less government, the fact is this new block grant program will create 50 new programs administered by 50 new State bureaucracies.

Under the Republican family nutrition block grant proposal, child care, nutrition, WIC programs, and others like them will be cut by 5.3; let me rephrase that, \$5,300 million. We should not talk about billions, we should talk about millions, because it is a number we can relate to better; \$5,300 million cut over 5 years from our women, infant, and children's programs. This is a successful program and should not be changed.

Mr. Speaker, I rise in opposition to these programs. These are mean-spirited Republican ideas.

#### PROTESTING THE DISMANTLING OF THE SCHOOL LUNCH AND CHILD NUTRITION PROGRAMS

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

Mr. MINETA. Mr. Speaker, I rise today in strong opposition to the Republican dismantling of the school lunch and child nutrition programs.

It has been proven, Mr. Speaker, that children who are not well fed are not well learned. Without proper nourishment, students simply do not achieve to the levels that they are capable. If their bellies are empty, their minds will be, too.

Turning the school lunch and child nutrition programs into block grants to the States will literally mean taking food from the mouths of children. It will result in a significant decrease in the number of lunches that are served daily at our schools.

In my congressional district alone, the California Department of Education estimates that more than 20,000 children will be impacted by this new block grant program.

Mr. Speaker, we need to ensure the future of our children. If we do not raise smart and healthy kids today, we will all suffer tomorrow.

#### CHILD NUTRITION PROGRAMS AXED

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

Mr. JEFFERSON. Mr. Speaker, it has been said that the moral test of government is how that government treats

those who are in the dawn of life, the children. Sadly, today Congress is falling extremely short of this test. It is sacrificing the health and well-being of our Nation's most vulnerable in favor of petty political rhetoric, and to safeguard the privileged status of the wealthiest of Americans on the backs of women and children.

With the near elimination of the school lunch and breakfast programs and the Food Stamp Program, among others, our colleagues on the other side of the aisle have hit nearly 5 million of America's children, our most precious resource, where it could very well hurt them the most—in their stomachs. Mr. Speaker, that is a shame.

The proposed rescissions this House will be asked to vote on soon are mean-spirited and close to a declaration of war on women and children. Child nutrition programs, undeniably, have been marked by many signs of success. There is a positive connection between child nutrition programs and educational attainment.

Low-income children who participate in these programs achieve higher standardized test scores than low-income students who do not. Decreased tardiness and absenteeism have also resulted from these programs.

In conclusion, Mr. Speaker, these nutrition programs have made it easier for children to do what we want them to do when they go to school—to learn.

Let us not take this chance away from our children.

#### PROVIDING FOR CONSIDERATION OF H.R. 988, ATTORNEY ACCOUNTABILITY ACT OF 1995

Mr. GOSS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 104 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 104

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 988) to reform the Federal civil justice system. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule for a period not to exceed seven hours. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill. The committee amendment in the nature of a substitute shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amend-

ments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The CHAIRMAN. The gentleman from Florida [Mr. GOSS] is recognized for 1 hour.

Mr. GOSS. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. HALL], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, as part of our ongoing commitment to fulfilling the Contract With America, today we consider the first of a series of commonsense legal reform measures. Americans are all too familiar with abuses and indefensible judgments spawned by our legal system. Almost every American can recall reading in a paper or seeing on TV some episode that boils their blood or elevates their blood-pressure about a system run amok—enough is enough.

People across our Nation have called upon us to restore some basic fairness and reason to the judicial process now. I would guess that most Americans probably agree that the \$3 million judgment recently awarded to a woman who spilled hot coffee in her lap was unreasonable. While the plaintiff in that case, and likely her lawyer too, now may rest comfortably on that judgment, the rest of America can expect to pay more for lukewarm coffee in the future. "Beware of hot coffee" signs are springing up at drive-in windows. Clearly, the system is out of balance and needs reform. And that is what we are doing here today. House Resolution 104 is an open, fair, and hopefully noncontroversial rule that allows us to consider H.R. 988. I am pleased that this resolution was reported out of the Rules Committee on a unanimous voice vote—with the full support of the minority.

Specifically, House Resolution 104 provides 2 hours of general debate and a total of 7 hours for any germane amendments Members may wish to offer under an open amendment process. Majority and minority members of the Judiciary Committee who testified on this measure at our hearing on Friday suggested that 7 hours of amendments plus 2 hours of general debate should provide Members ample opportunity to discuss the bill.

In fact, the timing in this rule was agreed upon in friendly negotiations with minority members of the Rules Committee. While the gentlelady from Colorado [Mrs. SCHROEDER] indicated

that some technical aspects of H.R. 988 may take time for nonattorneys to fully appreciate, she suggested that only 5 hours of amendment time would have been sufficient—we have offered 7. In fact, the minority members of the Rules Committee and the minority members of the Judiciary Committee indicated that they anticipate very few amendments from their side of the aisle.

Mr. Speaker, in 1989, Americans filed more than 18 million civil lawsuits against each other. That is about 1 suit for every 10 adults in America. Meanwhile, the number of lawyers and the profits of the legal service industry have been exploding. In 1970, there were only 355,000 attorneys in America. Today, that number has more than doubled, to nearly 1 million. I doubt anyone would claim our quality of life has doubled because of all those attorneys. Revenues to the legal industry have grown at a pace that exceeds that even of health care costs. I am delighted that the House is now beginning to address these disturbing trends by reconsidering some of our system's current incentives. The Attorney Accountability Act of 1995 seeks to discourage frivolous lawsuits while encouraging good faith settlement negotiations by plaintiffs and defendants alike. The bill provides for a modified loser pays rule for certain civil suits brought in Federal court. By requiring that litigants who reject reasonable pretrial offers of settlement pay a portion of their opponents' legal costs, the Attorney Accountability Act should to more fruitful good faith negotiations. While making changes to our legal system that should make that system work better for all Americans, this bill also preserves America's unique con-

tingency fee tradition—which is often crucial to ensuring access to the courts and our justice system by the poor.

Mr. Speaker, I support this bill and this fair and open rule.

□ 1430

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

Mr. HALL of Ohio. Mr. Speaker, I yield myself such time as I may consume.

(Mr. HALL of Ohio asked and was given permission to revise and extend his remarks and include extraneous material.)

Mr. HALL of Ohio. Mr. Speaker. I would like to commend my colleague from Florida, Mr. GOSS, for ably describing this rule which will allow consideration of H.R. 988, the Attorney Accountability Act. This is a rule which caps the overall time allowed for the amendment process at 7 hours. Normally, I am opposed to time caps on complex legislation such as this; however, the Rules Committee did reach a bipartisan agreement on an amendment offered by my colleague, Mr. FROST, during the committee's deliberations. Under the Frost amendment, as amended by Mr. SOLOMON, 2 hours of general debate is provided, and the time cap on amendments is increased from the original 6-hour limit to 7 hours. The rule also makes in order the Judiciary Committee amendment in the nature of a substitute as an original bill for the purposes of amendment.

Mr. Speaker, even though this rule was reported out of the Committee on Rules by a voice vote, I want to point out that the bill itself, H.R. 988, did elicit substantial discussion among members of the Rules Committee. This bill makes major changes to the current Federal civil justice system and

should be thoroughly debated. While many of us would have preferred a totally open rule, I am glad members of the committee increased the general debate time, as well as time for amendments, on a bill of this significance.

Mr. Speaker, I am troubled by some of the provisions of the Attorney Accountability Act. I do believe we have a problem in our country with frivolous lawsuits. We all have heard or read about cases which seem absurd, and result in increased costs to consumers and small businesses. However, before supporting this bill, I want to make sure we are actually getting at the reform intended.

The bill includes provisions which result in a loser pay system. Under these provisions, the nonprevailing party must pay the prevailing party's attorney's fees in Federal civil diversity litigation where a settlement offer has been made. While this could be a step toward reducing frivolous cases, I would like to see some assurances that this is not a tactic to scare away legitimate cases from middle-income people.

There was concern expressed in the Rules Committee that, under these provisions, defendants could make intentionally low settlement offers and inflate costs as a strategy. In trying to reform the judicial system, we should be sensitive to the fact that not all Americans, and small businesses, can afford high-priced attorneys—and many of them do have legitimate claims which have a right to be heard.

This rule does provide adequate time to explore this complicated and important subject, and therefore I will support the rule. I ask my colleagues to join me in supporting it.

Mr. Speaker, I include the following for the RECORD:

FLOOR PROCEDURE IN THE 104TH CONGRESS

Bill No.	Title	Resolution	Process used for floor consideration	Amendments in order
H.R. 1	Compliance	H. Res. 6	Closed	None
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed: contained a closed rule on H.R. 1 within the closed rule	None
H.R. 5	Unfunded Mandates	H. Res. 38	Restrictive: Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4: Pre-printing gets preference.	N/A
H.J. Res. 2	Balanced Budget	H. Res. 44	Restrictive: only certain substitutes	2R; 4D
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (O)	Restrictive: considered in House no amendments	N/A
H.R. 2	Line Item Veto	H. Res. 55	Open: Pre-printing gets preference	N/A
H.R. 665	Victim Restitution Act of 1995	H. Res. 61	Open: Pre-printing gets preference	N/A
H.R. 666	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open: Pre-printing gets preference	N/A
H.R. 667	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive: 10 hr. Time Cap on amendments	N/A
H.R. 668	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open: Pre-printing gets preference: Contains self-executing provision	N/A
H.R. 728	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive: 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A
H.R. 7	National Security Revitalization Act	H. Res. 83	Restrictive: 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A
H.R. 729	Death Penalty/Habeas	N/A	Restrictive: brought up under UC with a 6 hr. time cap on amendments	N/A
S. 2	Senate Compliance	N/A	Closed: Put on suspension calendar over Democratic objection	None
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed	H. Res. 88	Restrictive: makes in order only the Gibbons amendment: waives all points of order; Contains self-executing provision.	1D
H.R. 830	The Paperwork Reduction Act	H. Res. 91	Open	N/A
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive: makes in order only the Obey substitute	1D
H.R. 450	Regulatory Moratorium	H. Res. 93	Restrictive: 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A
H.R. 1022	Risk Assessment	H. Res. 96	Restrictive: 10 hr. Time Cap on amendments	N/A
H.R. 926	Regulatory Flexibility	H. Res. 100	Open	N/A
H.R. 925	Private Property Protection Act	H. Res. 101	Restrictive: 12 hr. Time Cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment; Waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text	1D
H.R. 1058	Securities Litigation Reform Act	H. Res. 103	Restrictive: 8 hr. Time Cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germaneness against it	1D
H.R. 988	The Attorney Accountability Act of 1995	H. Res. 104	Restrictive: 7 hr. Time Cap on amendments; Pre-printing gets preference	N/A

Note: 74% restrictive; 26% open. These figures use Republican scoring methods from the 103rd Congress. Not included in this chart are three bills which should have been placed on the Suspension Calendar. H.R. 101, H.R. 400, H.R. 440.

Mr. HALL of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GOSS. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

REPORT ON UNIFIED NATIONAL PROGRAM FOR FLOODPLAIN MANAGEMENT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore [Mr. KNOLLENBERG] 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 Banking and Financial Services and ordered to be printed:

*To the Congress of the United States:*

It is with great pleasure that I transmit *A Unified National Program for Floodplain Management* to the Congress. The Unified National Program responds to section 1302(c) of the National Flood Insurance Act of 1968 (Public Law 90-448), which calls upon the President to report to the Congress on a Unified National Program. The report sets forth a conceptual framework for managing the Nation's floodplains to achieve the dual goals of reducing the loss of life and property caused by floods and protecting and restoring the natural resources of floodplains. This document was prepared by the Federal Interagency Floodplain Management Task Force, which is chaired by FEMA.

This report differs from the 1986 and 1979 versions in that it recommends four national goals with supporting objectives for improving the implementation of floodplain management at all levels of government. It also urges the formulation of a more comprehensive, coordinated approach to protecting and managing human and natural systems to ensure sustainable development relative to long-term economic and ecological health. This report was prepared independent of *Sharing the Challenge: Floodplain Management Into the 21st Century* developed by the Floodplain Management Review Committee, which was established following the Great Midwest Flood of 1993. However, these two reports complement and reinforce each other by the commonality of their findings and recommendations. For example, both reports recognize the importance of continuing to improve our efforts to reduce the loss of life and property caused by floods and to preserve and restore the natural resources and functions of floodplains in an economically and environmentally sound manner. This is significant in that the natural resources and functions of our riverine and coastal floodplains help to maintain the viability of natural systems and provide multiple benefits for people.

Effective implementation of the Unified National Program for Floodplain Management will mitigate the tragic loss of life and property, and disruption of families and communities, that are caused by floods every year in the United States. It will also mitigate the unacceptable losses of natural resources and result in a reduction in the financial burdens placed upon govern-

ments to compensate for flood damages caused by unwise land use decisions made by individuals, as well as governments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, March 6, 1995.

ANNUAL REPORT OF NATIONAL ENDOWMENT FOR DEMOCRACY FOR FISCAL YEAR 1994—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

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 the provisions of section 504(h) of Public Law 98-164, as amended (22 U.S.C. 4413(i)), I transmit herewith the 11th Annual Report of the National Endowment for Democracy, which covers fiscal year 1994.

Promoting democracy abroad is one of the central pillars of the United States' security strategy. The National Endowment for Democracy has proved to be a unique and remarkable instrument for spreading and strengthening the rule of democracy. By continuing our support, we will advance America's interests in the world.

WILLIAM J. CLINTON.

THE WHITE HOUSE, March 6, 1995.

ATTORNEY ACCOUNTABILITY ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 104 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 988.

The Chair designates the gentleman from Ohio [Mr. HOBSON] Chairman of the Committee of the Whole, and requests the gentleman from Florida [Mr. GOSS] to assume the chair temporarily.

□ 1438

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 988, to reform the Federal civil justice system, with Mr. GOSS, Chairman pro tempore, in the chair.

The Clerk read the title of this bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California [Mr. MOORHEAD] will be recognized for 1 hour, and the gentleman from Michigan [Mr. CONYERS] will be recognized for 1 hour.

The Chair recognizes the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, I yield myself such time as I may consume.

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

Mr. MOORHEAD. Mr. Chairman, I rise in support of H.R. 988, the Attorney Accountability Act of 1995.

It is widely believed that the American legal system no longer serves to expedite justice and ensure fair results. It has become burdened with excessive costs and long delays. For many people, especially middle and lower income litigants, justice is often delayed and as a result is often denied. For instance, in 1985, the percent of civil cases over 3 years old in Federal district courts was 6.6 percent. Five years later that figure grew to 10.4 percent.

In addition to excessive costs and long delays, the American legal system has been hurt by an overreliance on litigation. According to Judge Stanley Marcus, chairman of the Judicial Conference Committee on Federal-State Jurisdiction,

If present trends continue, the federal courts' civil caseload will double every fourteen years, and in the twenty-eight years between 1992 and 2020 the compounded effect of that doubling and redoubling will raise the annual number of civil cases commenced from roughly 226,000 per year to nearly 840,000 per year.

Judge Marcus went on to observe that

Under current workload standards this volume of litigation would require an enormous increase in the number of district judges and circuit judges, transforming the existing nature of the federal judicial system virtually beyond recognition.

The overuse of litigation imposes tremendous costs upon American taxpayers, businesses, and consumers. H.R. 988 will begin the process of restoring accountability, efficiency, and fairness to our Federal justice system.

H.R. 988 addresses these concerns in three ways. First, it sets up a settlement-oriented loser-pays-attorney's-fee mechanism that rewards reasonable parties who negotiate to settle claims prior to trial. If either side rejects a settlement offer and goes on to win something less at trial, that side would be liable for attorney's fees and court costs. However, it is important to note that the awarding of attorney's fees under this section is not automatic. If the judgment is anywhere in between the last offer and counteroffer of settlement existing 10 days or more before trial, the traditional American rule applies and each side bears its own costs and fees. There are also two exceptions to the mandatory requirement that a court award costs and attorney's fees under this section. The first exception would allow the court to exempt certain cases based upon express findings that the case presents novel and important questions of law or fact and that it substantially affects nonparties. The second instance where a court would not be required to award costs and attorney's fees, would be when it finds

that it would be manifestly unjust to do so. This provision was drafted by my colleague from Virginia, a member of the Courts and Intellectual Property Subcommittee, Mr. GOODLATTE. I would like to commend him for his hard work and leadership on this important issue.

Second, the bill would limit the admissibility of scientific testimony of expert witness. It would make a scientific opinion inadmissible unless it: First, is scientifically valid and reliable; second, has a valid scientific connection to the fact it is offered to prove; and third, is sufficiently reliable so that the probative value of such evidence outweighs the dangers specified in rule 403.

The dangers specified in rule 403 are "unfair prejudice, confusion of the issues, or misleading the jury." What we intend to do here is to codify a relatively recent Supreme Court case of *Daubert versus Merrell Dow Pharmaceuticals* (1993). That case overruled the 70-year-old common law test enunciated in *Frye versus United States* (1923) that expert scientific opinion was admissible only if it were based on techniques that were "generally accepted" by the scientific community. The *Daubert* court held that the common law rule of "generally accepted" by a scientific community had been superseded by the new rule 702 and "generally accepted" was just one of several standards that should be used when a judge considers the admissibility of scientific testimony.

The value of the *Daubert* decision is that the court spoke extensively about how rule 702 should be applied. What we are trying to do here is to cut back on the possibility of distorted scientific evidence from being introduced into a Federal trial of civil litigation. We do this by shifting the burden of proof, whereas under present law the presumption is in favor of admitting expert scientific testimony, however, under H.R. 988 such testimony is presumed to be inadmissible unless certain standards are met.

Third, H.R. 988 would amend rule 11(c) of the Federal Rules of Civil Procedure relating to the sanctions a Federal judge may impose against lawyers who file frivolous lawsuits or engage in abusive litigation tactics.

Although Federal courts have always had the authority to sanction frivolous pleadings and papers, the early judicial, statutory, and procedural guidelines were very vague, and sanctions were extremely rare. Speaking before the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, then-Chief Justice Burger noted with alarm the

Widespread feeling that the legal profession and judges are overly tolerant to lawyers who exploit the inherently contentious aspects of the adversary system to their own private advantage at public expense.

In 1990, the Judicial Conference's Advisory Committee on Civil Rules un-

dertook a review of the Rule and asked the Federal Judicial Center [FJC] to conduct an empirical study of its operation and impact. The study found that a strong majority of federal judges believe that: First, The old rule 11 did not impede development of the law—95 percent; second, the benefits of the rule outweighed any additional requirement of judicial time—71.9 percent; third, the old rule 11 had a positive effect on litigation in the Federal courts—80.9 percent; and fourth, the rule should be retained in its then-current form—(80.4 percent).

Despite this clear judicial support for a strong rule 11, in 1991, the Civil Rules Advisory Committee included provisions to weaken the 1993 rule in a broader package of proposed amendments to the Federal rules. The proposed changes were then sent to the Supreme Court for approval or modification.

Exercising what it viewed to be a limited oversight role, the Supreme Court approved the proposed changes without substantive comment in April 1993. In a strongly worded dissent on rule 11, Justice Scalia correctly anticipated that the proposed revision would eliminate a "significant and necessary deterrent" to frivolous litigation:

[T]he overwhelming approval of the Rule by the federal district judges who daily grappled with the problem of litigation is enough to persuade me that it should not be gutted.

H.R. 988 makes several important changes to rule 11. First, it reestablishes a system of mandatory, as opposed to discretionary, sanctions. That is if a judge finds that a lawyer has filed a frivolous lawsuit or otherwise abused the system and if it's warranted the judge shall award attorney's fees to the abused party. Second, it mandates the use of attorney's fees as part of the sanction. Third, it puts a bigger emphasis on the rule's compensatory function by clarifying that sanctions should be sufficient to deter repetition and to compensate the parties that were injured.

All of these changes make good, common sense. Mandatory sanctions send a clear message that abusive litigation practices will not be tolerated by our judicial system or the judges who form its core. Appropriate monetary sanctions, including the award of attorney's fees, also help in deterring abuse and provide some recompense for parties that are harmed by sanctionable misconduct.

Fourth, H.R. 988 would eliminate the so-called safe harbor provision of the current rule, which permits a lawyer or litigant to withdraw a challenged pleading, without penalty, prior to the actual award of sanctions. As Justice Scalia noted in his dissent to the Court's transmission of the new rule 11 to the Congress,

Those who file frivolous suits and pleadings should have no "safe harbor." The Rules should be solicitous of the abused and not of the abuser. Under the revised rule, parties will be able to file thoughtless, reckless, and

harassing pleadings, secure in the knowledge that they have nothing to lose \* \* \*

Fifth, it would return to the pre-December 1993 practice of applying rule 11 to discovery abuses. An empirical study conducted by the American Judicature Society suggested that discovery made up over 19 percent of the motions that were filed under the old rule 11. It is important to sanction discovery abuses just as it is important to sanction abuses at any stage of the litigation process.

By so doing the public has a sense of fairness in the knowledge that abusive practices will not be tolerated by our justice system. Mandatory sanctions also prevent judges from going easy on lawyers who break the rules. Most judges do not like imposing punishment when their duty does not require it, especially on their own acquaintances and on members of their own profession. This is human nature.

Mr. Chairman, in conclusion, I believe it is important to point out that we have over 850,000 lawyers in this country. Of these very, very few ever step foot into a courtroom. And of those who do, the vast majority do not file frivolous lawsuits or otherwise abuse the system. In fairness to my profession and in fairness to the vast majority of lawyers in this country, this legislation and my comments are not directed at them. They work hard and they participate fairly and they make an important contribution to this country and to our system of justice. This legislation is intended to make an impact on those few lawyers who do take advantage and abuse and misuse the system for their own private benefit. Rule 11 sanctions are to be implemented and like other types of clear penalties in our civil and criminal justice system, are intended to send an unambiguous message that abusive conduct from lawyers will not be tolerated.

I urge a favorable vote on H.R. 988.

□ 1445

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

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, when the loser-pays provision was unveiled, it was part of the controversial Contract With America. Now we know that H.R. 988 is really part of the Republican majority's contract with corporate America. And reading the fine print of this provision makes clear that the average American citizen is not a party to the contract.

This bill, and all of the other bills we debate this week on civil justice reform are drafted from a single point of view: the corporate defendant's. All these bills seek to cut out the plaintiffs' right to bring cases in the first place by either eliminating who you can sue, where you can sue, or how much you can receive in compensation for harm suffered.

If this bill really strived in a neutral fashion to penalize frivolous lawsuits

or to discourage the filing of clearly unmeritorious cases, no one in this Chamber would have any trouble supporting this proposition. But when the bill is clearly drafted to deter middle-income persons from pursuing reasonable claims in court and placing them at a severe disadvantage with risk-free parties, such as large corporations whose legal fees are normally deducted as a business expense, then I have great objection to this legislation.

We are told that the motivation behind the loser-pays provision is the tremendous number of frivolous lawsuits filed every day in America. But the proponents offer no empirical data to support their claims. They did not in the committee, perhaps there will be some arriving here today.

The so-called explosion in litigations throughout the 1980's and 1990's upon examination we find was brought by corporations suing other corporations or domestic relations suits, it was not an explosion of product liability actions or medical malpractice actions, or of tort actions in general.

It is notable that the new majority of Republicans are eager to embrace the so-called English rule just as prominent voices in England are calling increasingly for the abandonment of the rule in that country itself.

In a January 14 editorial, the conservative British magazine, *The Economist*, called for the abandonment of the rule because "only the very wealthy can afford the costs and risks of most litigation" under the English rule.

I continue to quote, "This offends one of the most basic principles of a free society: equality before the law."

This comes from England, not from the United States. It is clear that the loser-pays provision in H.R. 988 fails to distinguish between frivolous cases and reasonable cases in which liability is closely contested, and thus will deter many, particularly middle-income citizens and small businesses, from pursuing reasonable claims for defenses.

As one scholar has noted, for a middle-income litigant facing some possibility of an adverse fee shift, defeat may wipe him out financially. The threat of having to pay the other side's fee can loom so large to be intimidating in the mind of a person without considerable disposable assets that it deters the pursuit of even a fairly promising and substantial claim for defense.

It is intimidating to have such a proposal now brought before the Congress to become part of our law.

Middle-income parties and small businesses may have to place their very solvency on the line in order to pursue a meritorious claim. And frequently in tort cases we do not know what a meritorious claim is because the evidence might determine a case becoming a big winner or a total loser. The burden of proof in a civil case is preponderance of the evidence often described as the amount of evidence that shifts the scale, if even only slightly,

from the point of balance. A middle-income plaintiff confronted with a written offer to settle under section 2 of this bill must settle at that point, must settle at that point unless he or she is willing to assume the risk of payment of the other side's attorney's fees, and for a middle-income plaintiff who would be financially ruined by such an award, the calculus becomes in effect whether it is reasonable beyond doubt that they will prevail.

That is a pretty high standard, and it is notable that the States often referred to as the laboratories of democracy have not in any significant numbers perceived the English rule to be an appropriate measure for their court systems, nor do I.

The Florida experience, in which doctors first demanded the English rule and then demanded that it be abolished, should be a reminder to us that unintended consequences often overtake the intended ones, particularly when we act hastily and without thoughtful deliberation.

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

Mr. MOORHEAD. Mr. Chairman, I yield 8 minutes to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, the gentleman from California quite adequately described the provisions that are to appear for general debate and then during the 5-minute rule for amendment. The gentleman from Michigan is worried about the English rule. I think we ought to set the stage for the debate that is yet to come by at least an attempt by this Member to give a kind of a historical development of how we reached this point. I will not start with William and Mary or 1066 or the Battle of Hastings or 1215 or any of those historical dates, but I will start in this House of Representatives when long ago, I say to the gentleman from Michigan, we abandoned the English rule, even in the drafting of our loser pays provisions as they appear in this bill. So that should be noted.

But for the public, let us talk about this for a minute and for the record.

□ 1500

Loser pays is a concept that pleases the American people who are watching our court system disintegrate before their very eyes. Loser pays simply says to our people that if a claimant goes into court, has his lawyer file a suit that is totally frivolous, but does so for the purpose of trying to get a settlement from a company that is not willing to go to court but knowing that the case is not worth anything but just to get them off their backs, offers something and the plaintiff walks off with a windfall, something that they could not have earned in court but because of the system they are able to get a settlement, well, people look askance at

that, and it is causing a great tremor in our justice system.

So we thought about that. Many people favor the concept of loser pays. It says that if a claimant comes into court with a frivolous claim, let us assume, just for the moment, one of these claims that has very little basis in law or fact, but is known to generate an offer from the insurance company representing the other side, just for the sake of getting that person off their back, the loser pay context says that if that case should go into court and the defendant insurance company and the others say:

We are not going to pay you a penny of blackmail or extortion type or pressure type of damages; you take us to court. We do not care, but if you lose under the loser pays, you are going to have to pay the attorney fees and costs that it cost us to come to court and defend this lawsuit.

And vice versa, if the plaintiff makes a bona fide claim of \$100,000 and the defendant insurance company says it is not worth a darn when it really is and they know that they are stiffing the plaintiff by not agreeing to negotiate for settlement and they dare to go into court, and the plaintiff does win the \$100,000 or something akin to it, then the defendant should pay the attorney's fees and costs.

So that is what loser pays is all about. Should we have something like this in the current situation? Should we try to modify that? Should we try to bring loser pays into the American judicial system?

Because right now we have what is called the American system. The American system is you go to court and each pays his own attorney's fees and costs and there are some rare cases where, by reason of a statute, attorney's fees have to be paid by the losing party, et cetera. But generally that American rule allows each party to pay or forces each party to pay his or her own attorney's fees and costs, et cetera.

So now, where are we? The English rule says loser pays no matter what happens in court. The loser has to pay the attorney's fees and costs of the other party. We found some objection even among the lawyers in the Committee on the Judiciary on that.

I point this out to the gentleman from Michigan, and it is astounding that it is the gentleman from Michigan, because what I have to say touches upon his own State. When we decided that we had to have some kind of loser pays but something that makes sense, we adopted, the gentleman from Virginia [Mr. GOODLATTE], the gentleman from South Carolina [Mr. INGLIS], and I and others, reformulated, as did the gentleman from California [Mr. MOORHEAD] and his staff, reformulated rule 68. So those of you who would condemn loser pays are also condemning, if you condemn loser pays in its generic form, in its broad form, you are also condemning rule 68 as it now

applies to the rules in the rules of Federal procedure.

So those who condemn loser pays are not even satisfied with what has already been a Federal rule for a long time, rule 68, which is a modified form of loser pays.

Now, further, our modification modifies further the modification that appears in rule 68 of the Federal rules of civil procedure. So do not give us this rhetoric about you are opposing loser pays unless you also oppose rule 68 and are not satisfied with the judicial conference and its promulgation of its rules as it applies to loser pays.

We already have loser pays. We are trying to perfect it.

And you know what rule I want to see applied, I say to the gentleman from Michigan? Is the gentleman from listening to me?

I want to apply the Michigan rule which, for a long time, has had loser pays in the State and it works, and it is loser pays. Do you, in your condemnation of loser pays and the English rule, are you ready to concede that the rule 68 in Federal rules of civil procedure, and the Michigan rule which is a modification of that, are acceptable modes projecting loser pays? That is what the debate is going to be about.

We feel we have come up with a thoughtful analysis of loser pays, and to try to get these parties to negotiate to reduce the number of frivolous debates, of frivolous suits that are filed, and try to get people to come to the middle of offer of settlement so that these cases would not have to clog up the docket and the negotiations would be fostered.

Here is the idea, when the plaintiff demands \$100,000 and the defendant says, "I can only pay \$50,000," then if the verdict comes in somewhere between the two, each one has to pay his own costs. If it comes in over \$100,000 where the defendant could have settled for 100, then the defendant has to pay the costs. If it comes in under \$50,000 where the defendant has to pay now more than they have conjured up that it had to pay, it should also have to pay the attorneys fees and the costs.

The plaintiff would have to do that if it is under \$50,000. That is a reasonable way to do it.

And the Michigan rule, which I would like to see occur and which I will debate under the 5-minute rule, is this, I say to the gentleman from Michigan, the claimant offers to settle for \$100,000. The defendant says no, \$50,000 is enough. Well, that strikes immediately under my amendment the number 75,000, and if the verdict comes in at 90,000, then the defendant has to pay the costs. If it comes in under 75, the plaintiff has to pay the costs.

What we are trying to do is drive these people into a negotiating mode in which the reasonable middle area would be found for possible settlement of the case so that the loser would pay and keep the case out of court.

We have a thoughtful approach to this, and I will reject the rhetoric of you are against loser pays because you are against the present law if you are against loser pays.

Mr. CONYERS. Mr. Chairman, I yield 6 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I thank the gentleman for yielding this time to me.

I just have a couple of comments to make. First is on the sanctions. Many plaintiffs bring the cases on a contingent fee. If you lose the case, if the lawyer brings such a case and does not win, whether it is frivolous or not, if he does not win he does not get paid a fee at all. That is certainly a sanction.

If the case is, in fact, frivolous, the present law already provides significant sanctions.

There have been recent improvements in that law, and we need to let them play out to make sure they work.

There have been no complaints, or very few complaints, about the present law as it has been improved, and in terms of the loser pays, Mr. Chairman, that is a good sound bite but it is just not good sound policy. It will have the effect of denying the average citizen access to the courts.

The corporations who are suing each other, obviously their attorneys fees can be a cost of business, if they are defending or bringing cases against individuals, it can be a cost of doing business.

Our courts ought to be a place where citizens can have their rights vindicated and resolve those differences. If we have the loser pays, we are going to have a significant situation where the average citizen will not have access to the courts.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, on that point, I tried as strenuously as I could, and I ask the gentleman, does he reject rule 68 of the Federal rules of civil procedure which is a current law which is a type of loser pays?

Mr. SCOTT. It is my understanding if you bring a frivolous lawsuit, then you can have attorneys fees assessed against you. I agree with that if it is frivolous. I am not supporting frivolous cases. A lot of cases that are not frivolous, it is a close call. You do not know the people are going to lie about the color of the red light, and you lose your case because of that. That is not a frivolous case.

Mr. GEKAS. It still remains, under your definition, to determine whether or not it is frivolous, but you would favor loser pays in that situation?

Mr. SCOTT. I would favor loser pays as a sanction against a frivolous lawsuit, but not against a meritorious lawsuit.

Mr. GEKAS. Nobody does.

Mr. SCOTT. If someone in good faith, if someone brings a good-faith lawsuit,

they ought not be threatened in the way this loser pays threatens them if it is a close call, and you lost a close case, you not only lose your case, lose all you are putting into the case, you lose your house, lose your kids' education for having dared to come forward with a case that was meritorious, you just did not win. I do not agree with loser pays to put people into bankruptcy for having dared to come into court to vindicate their rights in good faith.

Mr. GEKAS. Mr. Chairman, if the gentleman will yield further, if we are to demonstrate to the gentleman from Virginia that none of the thoughtful, reasonable loser pays provisions that we are projecting does anything except militate against frivolous suits—

Mr. SCOTT. Reclaiming my time, that is not what it is.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding. First, let me say is it not that the situation a defendant is placed in right now, they have absolutely no choice about being brought into court? They are made a defendant, and even whether the case is frivolous or has a close call, they have to bear risk, they have to bear attorneys' fees, no matter what their background is. They may be poor, they may be middle class, they may be a small business, they may be a large business. They still have to bear that risk.

In a contingent fee case, you see the ads in the paper all the time now, no fee if no recovery. No risk is the message, and do you not think there should be something on that situation that the plaintiff has to look at?

Mr. SCOTT. I would say the present law provides if people have a bona fide claim they want to bring to court, they have their rights they want vindicated, if they have been ripped off by a business, if they are trying to get money they loaned to somebody and they want to get it back, there are technicalities in the law they may not be able to get it back. Whatever the reason they are in court vindicating their rights, they ought to be able to come forward without having to bet their house and kids' education on the outcome.

Mr. Chairman, I only have a short period of time, and all that I am asking, Mr. Chairman, is we not change this law, we not force people into a situation where they have to bet their house in order to get what they deserve. That is not right.

This bill ought to be defeated. The courts are not only for those that can bet tens of thousands of dollars on the outcome, it is for average citizens that can come into court to vindicate their rights.

Mr. MOORHEAD. Mr. Chairman, I yield 10 minutes to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the chairman for yielding and for his hard work on this bill, which I think is a very good bill.

I rise in strong support of it. This bill has three provisions, all of which are geared toward bringing more common sense to our legal system.

The first deals with the losing party in a lawsuit under certain circumstances paying the winning party's attorneys' fees, limited to just 10 days before trial, through the trial, limited to not exceeding the amount they paid their own attorney and limited by other discretion given to the judge; I think this is eminently reasonable and allows the award of attorneys' fees only in cases where they party who is the losing party, whether it is the defendant or the plaintiff, is unreasonable, or has a frivolous action or a nonmeritorious action.

I would say to the gentleman from Virginia that he recognizes that this, even taking his point of view, is a substantial improvement over the loser pays provision that was in the bill from his point of view. He voted for this amendment in the committee.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Virginia.

Mr. SCOTT. I will acknowledge that your amendment in committee made the bill less worse than it is.

Mr. GOODLATTE. Thank you.

Mr. SCOTT. I will also acknowledge that you have to try the meritorious good suits and the frivolous suits under the same procedure, and people coming into a lawsuit do not know whether they are going to lose in many occasions, and ought not be, when discussing whether they are going to bring the suit or not—

Mr. GOODLATTE. The gentleman's point is correct. The same thing is true of a defendant, whether that be an individual, regardless of their economic background, whether that be a small business person whose business could be lost, the bringing of the lawsuit imposes risk upon that party; it does not impose risk upon the plaintiff.

Now this changes that in this respect, it says that if the party, if a suit is filed, and the parties negotiated in good faith, then the losing party in those negotiations will be responsible for the prevailing party's attorneys' fees limited, as I described earlier, when it occurs that the losing party's recovery in the case either being a verdict against them or a verdict lower than the amount that was offered by the defendant occurs, and it just seems to me in every single case this would apply the defendant or the plaintiff if they do not prevail is shown to have had: First, a nonmeritorious case, and second, not to have prevailed in the case, to not having been reasonable in the case. For example, if the plaintiff sues the defendant for \$100,000, the defendant offers the plaintiff \$50,000, the plaintiff turns that down and goes into

court, if they get an award greater than \$50,000 but less than the \$100,000 they sued for, there is going to be no award of attorneys fees; if they get something less than \$50,000 and they were up at \$100,000, they were unreasonable in their negotiations and they should be required to compensate the reasonable party that in good faith offered to settle the case or a defendant who feels there is no merit to the case and offers to dismiss the case because it has no merit and they insist on going into court, they ought to suffer some exposure for liability and not simply have the system we have right now where it is estimated, here is an article by George McGovern of all people just published in the news very recently.

□ 1515

This was just published in the newspapers just recently, "America Must Curb Its Lawsuit Industry." He says:

First, we must put a stop to the frivolous and fraudulent lawsuit. It has been estimated at a meeting of the American Board of Trial Advocates that a fourth of all the lawsuits filed in the United States are either frivolous or fraudulent. Another study by Harvard University on medical injury and malpractice litigation found that 80 percent of the participants in those suits suffered no real injury as a result of medical negligence. Attorney sanctions should be strengthened to keep frivolous or fraudulent cases out of court.

Mr. McGovern speaks from his own personal experience. He started a business in Connecticut. He had a small hotel there, and, after successfully defending against two slip-and-fall cases at the hotel, discovered that, while he was successful in defeating each one of these cases that did not have merit, he in each case spent large sums of money defending the case which never should have been brought in the first place.

So, Mr. Chairman, it seems to me that we are being entirely reasonable and we are doing this for the benefit of all parties involved, plaintiffs and defendants, and, more importantly, we are doing this for the benefit of consumers because, if we use this to encourage settlement of cases, to cut down on the amount of litigation, to cut down on the amount of court time, and, if we can use this to encourage or discourage the bringing of frivolous suits and fraudulent suits, the price of goods and services are going to be reduced in this country because anybody who offers a product for sale has to factor into the price that they sell that product for the insurance they pay and the other legal costs they have attendant to that, and in addition, Mr. Chairman, the cost of insurance would be reduced if these cases could be screened out.

This is an effective mechanism for screening them out, and I urge the passage of this bill.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I am glad that the gentleman is taking some

time in general debate because I want to debate early between ourselves the negotiations that the gentleman and I have been carrying on and what the final formulation might be if the loser pays.

I say to the gentleman, "You and I had discussed, even before markup, the possibility of utilizing the Michigan rule, to which I referred to before. In that case let me give the hypothetical and see if you agree. I offer—as a claimant I claim \$100,000, and you, the defendant, offer \$50,000, just like in your example that you gave the gentleman from Virginia. But in applying the Michigan rule, which I looked upon with favor, if we stopped there and were hard set that those two figures, and it moves into trial, the figure, for the purpose of loser pays, becomes the median between the two at \$75,000. So then, if the verdict comes in at \$76,000 or above \$75,000, then the defendant has to pay all the costs."

Correct; under the Michigan law?

Mr. GOODLATTE. That is correct.

Mr. GEKAS. And if it comes under \$75,000, at \$62,000, or \$73,000, or whatever, then the plaintiff would have to pay the—because the median figure was not met.

Now I know the gentleman agrees with me when I say to him and I say to the Members, "This stimulates and urges negotiation because, when we're sitting on the other side of the table, you and I, and I'm at \$100,000, and you're at \$50,000, and we know that \$75,000 is going to be the point at which the attorneys' fees costs are going to be relegated, then maybe I will—well, look, I'll settle for \$87,500, or you move it up to \$62,500, that type of thing."

Mr. Chairman, does the gentleman agree with me that that does stimulate a negotiation?

Mr. GOODLATTE. I would agree it stimulates negotiation.

Let me say that the concern I have is that the difference between the Michigan rule that the gentleman is articulating very accurately here and the bill, as it is currently drafted, is that under the current circumstances only when the Plaintiff meets or exceeds the amount of their demand will they get attorney fees. Only when the defendant keeps the plaintiff below the amount of their settlement offer will the defendant get attorney fees, and in the area in between that \$50,000 to \$100,000 no one, no party, pays the other party's attorney fees as the bill is written.

I say to the gentleman, "You would make it razor sharp by saying, if it's 75 thousand and one dollar, the plaintiff prevails, and the defendant pays his attorney fees. If it's \$75,999, the defendant prevails, and the plaintiff pays his attorney fees," and I really don't think the merit of whether or not a case was reasonable ought to fall on one dollar. That can never happen.

Mr. GEKAS. Will the gentleman yield further?

Mr. GOODLATTE. Let me finish this. That can never happen under the circumstances we currently have in this bill because, if it got that close together, \$1, or even \$1,000, or \$5,000, the way the bill is written they will close that up. They will not go to court over a difference of a few dollars. But in the gentleman's case they are between \$50,000 and \$100,000, and they will often decide that it is not fair to go to court. It will put more pressure on them to settle because of that razor sharp limitation, but in the end the decision will be made based on the difference of \$1, and that is the hesitation I have with that—

Mr. GEKAS. Mr. Chairman, will the gentleman yield further?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. That razor would be brought down on the neck of the \$50,000 to \$100,000 proposal that the gentleman and I are using as an example, and even under the main language of the bill, because if the verdict is \$49,999, are we not making an arbitrary cut there as to who is—

Mr. GOODLATTE. Reclaiming my time, Mr. Chairman, the gentleman is correct, but the difference is that in my case the plaintiff is at \$100,000 in the case, and the defendant is at \$50,000 in their settlement offer, so if the plaintiff recovers \$49,999, if the gentleman will, the plaintiff was off by \$50,000 in terms of their offer, and there is that \$50,000 gap between when one side has to pay attorney fees and when the other side has to pay attorney fees. In the gentleman's case there was a \$1—

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

Mr. MOORHEAD. Mr. Chairman, I yield 2 additional minutes to the gentleman from Virginia.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, what we are really saying—I do want to predict how the argument is going to go later when the amendment process begins.

The gentleman is saying that the present language, not the Michigan rule, but the present language, is more likely to deter frivolous suits because the gap between the \$49,999 and the \$100,000 is so great that that proves that the plaintiff should not recover because it is more or less frivolous or—

Mr. GOODLATTE. I do not know that it is more likely to deter frivolous suits, but I do think it is more fair in the sense that one dollar should not decide the difference between who gets attorney fees and who does not, and that is the effect of that adding that additional point in there in the Michigan—

Mr. GEKAS. If the gentleman would yield further, I would be willing to talk to the gentleman from Virginia on the

other side, and the gentleman from North Carolina on the other side, and the gentleman from Michigan at a sidebar following the general debate to see which of the two approaches, assuming that they are going to have to accept, or at least recognize, the possibility that loser pays is going to find its way into this law, to see which of these two approaches they would find acceptable. If they say, "Go back to your closet," I will do that. But if they want to discuss it with me, that discussion that I will have with those three gentlemen will make me determine whether or not I will advance my amendment when the time comes for general—for the amendments.

But in either case, Mr. Chairman, I would offer an amendment to tighten up the second offer that is made in this bill's language after the first negotiations are ended.

Mr. GOODLATTE. Yes, that amendment would be helpful, and I think it is a good amendment.

Mr. GEKAS. All right.

Mr. CONYERS. Mr. Chairman, I yield 15 minutes to the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the minority ranking member for yielding this time to me.

Mr. Chairman, I want to spend a few minutes putting this bill in a little bit different context than the discussion that has been taking place here because I think my colleagues and the American people really need to understand that this bill is part of a larger package of bills, and they need to have a better understanding of what that package of bills, when considered together, will yield in the legal context.

This bill is called the Attorney Accountability Act of 1995. There is a Securities Litigation Reform Act which will follow this bill in sequence. And then finally there is a bill which we around this body call the Tort Reform Act, which proposes to reform product liability cases and punitive damages in a general way, and I do not think we can talk about this particular bill without putting it in the context of this whole reform package in having a better understanding of what my colleagues in this body are trying to do.

I have some serious reservations about this whole major reform effort because my experience is somewhat different than many of my colleagues in this body, and I represent to some extent a constituency that is a little different than many of my colleagues in this body. The experience that I bring to this body is one of having practiced law for a total of 2 years before being elected to Congress, and, while I am aware of general assumptions, jokes, negative comments that people make about lawyers and the representation that lawyers tend to have in this country, my experience has been one of being on the side of lawyers and clients who were fighting to secure their constitutional rights

and fighting to be free of the invasion of the State into their homes and lives, and fighting to have equal rights in a system which sometimes does not assume that they ought to have those rights, and in my experience lawyers have played an important and valuable role in protecting the rights of people, and I think, if we look at the totality of these three bills that we are debating this week, there are some troubling assumptions that underlie these bills.

One of those assumptions is that most lawyers are bad or dishonest. Well, I am not going to come into this body and try to tell my colleagues or tell the American people that there are not dishonest or bad lawyers, but I would come into this body and say to my colleagues that for every one bad and dishonest lawyer, I will submit to my colleagues, that there are thousands of good and honest lawyers who take their responsibilities to represent their clients seriously and view that as a serious responsibility.

The second assumption that I think we need to be aware of, as we debate these three bills that are on the floor this week and we need to be very careful about how we approach our assumptions on this issue, is that when our courts get clogged and there are backlogs in the court system, that poor people should not have access to the courts anymore, that the court system should be the place and province only of people who are dealing with big litigation, dealing with lots of money and major business rights that may be at play.

□ 1530

That is one of the assumptions that I think is implicit in this whole loser pays system, that everybody who comes in to the court, either, well, both, really, has a case which is frivolous or that they can afford to pay the cost of the other side in the litigation. They have big bucks, so to speak.

Well, think about what we are saying when we talk about the loser pays. It says that even if you have a valid lawsuit, a good lawsuit, it is going to cost a lot of money to bring that lawsuit. And if you happen to lose that litigation, not only are you going to have to pay your own litigation expenses and legal fees, you are going to be called upon to pay the litigation expenses and legal fees of the opposing party.

Now, this bill that we are debating today started off, as my colleague, the gentleman from Virginia [Mr. SCOTT], has indicated, to be a lot worse in this regard than the bill that has come to the floor. I am the first to commend the gentleman from Virginia [Mr. GOODLATTE] for taking what was an absolutely terrible piece of legislation and revising it somewhat in committee to make it a better piece of legislation. But I would submit to my colleagues that this bill still assumes that poor people really do not have a place in the legal process and they are going to be

discouraged from bringing lawsuits to court.

I would submit to my colleagues that if this plays out, we need to be careful that we do not send the wrong message to poor people who are finding a legal process that is available to them. Because if the legal process is not available to poor people to resolve their disputes, then what process is available to poor people to resolve their disputes? Would we have more people go back to the days that they are dueling and challenging each other in the alleys and streets of America? Or would we make available to them on a fair and equitable basis the right to have their grievances addressed in a court of law?

There is a third assumption that I think is implicit in these three pieces of legislation that we need to be leery of. That assumption is that we should somehow in this body be protecting the rich and subjecting ordinary people to the whims of the rich business community to even their experimentation and their bad motivation, because I think by the time we get to the third bill and we start to see that we are putting limitations on punitive damages and we are redefining the standards that apply in products liability cases and in other tort cases, to increase the standard to a higher standard of care or a lesser standard of care for the manufacturer and a higher standard of proof for people who seek to come into court and file a claim against the manufacturer, that we are beginning to take sides in this issue.

I want to get through this not in the context of this particular bill but in the total context of these bills, all of which started out as one big legal reform package and, I would submit to my colleagues and the American public, will end up back together in one big reform package, if we follow the policy that was followed last week to split these reform measures into little pieces, pass the little pieces one at a time and then at the end of the week come back and make a motion to consolidate all of them into one package so that they can check off or, as I said earlier, punch another little hole in their Contract With America and check off another one of those little contract items, which is what, I submit to my colleagues, this is all about.

So the effort in these bills is not only to limit access to the courts. That is what loser pays, in my estimation, is all about, because any time somebody is poor and wants to go and file a lawsuit, they are going to have to think not only once, twice, or thrice, but many, many times before they will have the nerve to file a lawsuit, even if they think their claim is meritorious.

It also has the effect, these bills, of limiting the possibility of plaintiffs' recoveries, by making it more difficult to win the cases by raising the legal standards, by raising the legal fees that must be paid to the other side if you lose the case, and even by limiting the amount of attorney fees that plain-

tiffs can win and be awarded if they win the case to correspond with the amount that was paid by the defendant in the case to his or her counsel.

Now, is that not a pretty radical idea? The plaintiff, which comes into court and has the burden of proof in every case that is filed, all of a sudden, even if they have a meritorious case and they win the case, the maximum that they can recover in attorney's fees from the other side is the amount that was paid by the other side to the defendant in the case.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the reason that is in there is to limit the exposure of parties that may be lower-income parties because the converse is true as well. If the defendant prevails, the plaintiff cannot pay any more than he pays himself.

Mr. WATT of North Carolina. Mr. Chairman, reclaiming my time, I did not think the gentleman was going to get defensive as quickly as he did, to be honest with my colleagues. But that should show everybody exactly the point that I am making here. This is a radical concept, and if we are going to have equity, that situation ought to be flowing both ways. It should not just be flowing one way.

Let me make one final point, and then I will be through. We will have the opportunity to debate this back and forth during the course of this whole week, I expect, that we will be on this legal reform package.

The final point I want to make to my colleagues and to the American people is that somebody in this process ought to be worried about protecting ordinary people in our society. I submit to my colleagues that neither one of these bills, neither this bill that is coming to the floor today, the securities litigation bill that will be right behind it, nor the products liability limitation and punitive damages limitation bill that will come later in the week is designed to be in the interest of ordinary American people. We have gotten to the point in this body that we are so consumed with lifting the burden off of business that the pendulum has swung completely to the other end of the spectrum.

I would submit that the American people ought to be concerned about that and my colleagues ought to be concerned about it. We ought to be opposing this bill.

Mr. MOORHEAD. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. FLANAGAN] for a colloquy.

Mr. FLANAGAN. Mr. Chairman, I thank the gentleman for yielding time to me. I appreciate the gentleman's leadership on H.R. 988 and would like to address a question to the gentleman regarding section 3, the honesty in evidence provision.

As the gentleman is aware, this section establishes some guidelines for determining the admissibility of scientific expert testimony. It is my understanding that in consideration of this bill, the committee intended that H.R. 988 serve to codify the holding in the Supreme Court case Daubert but felt that the specific criteria in Daubert were not meant to be exhaustive and, therefore, did not limit the statute facially to such criteria.

Instead, the committee anticipates further expansion of the criteria through continuing appellate review. This criteria, namely testing, peer review, and publication, are certainly criteria that should be utilized in determining scientific validity and reliability.

Mr. Chairman, is this a correct interpretation of the intention of this bill?

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. FLANAGAN. I yield to the gentleman from California.

Mr. MOORHEAD. Yes, it is a correct interpretation of the committee's intent. The value of Daubert is that the Court spoke extensively about how rule 702 should be applied. In our report we make it very clear that we intend to codify Daubert and that we expect it to be further developed through case law. As the Department of Justice pointed out in its submission to the subcommittee, the Daubert decision is complex and cannot be easily distilled into a word or two of black letter law. That is why we did not just adopt the four standards set forth in Daubert. We intended to both codify and complement the standards established in Daubert.

With the judge acting as the gatekeeper, section 3 is intended to prevent lawyers from taking advantage of the court system.

Mr. FLANAGAN. Mr. Chairman, I thank the gentleman. I was glad we could clear that up.

Mr. MOORHEAD. Mr. Chairman, I yield myself 2 minutes.

Comments have been made about this legislation helping the rich at the expense of the poor. My clients throughout the 25 years that I practiced law were basically poor people. I ran the legal aid service in Glendale for 16 years. I want to help people that cannot help themselves. But I can tell my colleagues, poor people are more apt to be the defendants than they are the plaintiffs. Rich people are more apt to be the plaintiffs than are the poor.

I think this legislation helps the poor defendant who otherwise would be bankrupt by frivolous cases that are filed against him. And by poor we do not necessarily mean people who have no money whatsoever, but people who are middle class or below, as far as their financial ability is concerned. They can be bankrupted very easily by a frivolous lawsuit that is filed against them and the little that they have taken away from them.

The portion of the bill toward the end that deals with rule XI, I tried to defeat several years ago when the law was changed after 10 years of successful existence.

That part of the bill is a reenactment of legislation that we had that was effective for 10 years and that the courts liked overwhelmingly because it helped them when lawyers were doing things that should not be done and filing frivolous cases or frivolous pleadings at the expense of people at the other side.

I think we have a good bill. I think we have a bill that is aimed to help all litigants, includes the people who do not have means, who need to be helped, but who are very badly hurt by the present system.

I think we need this change. For that reason, I am for it. I think those Members that have said that it is aimed to hurt the poor just do not understand the legislation, because that is not what it does.

□ 1545

Mr. CONYERS. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, I rise to point out the problems that we are confronted with, which are multiplying rapidly. First, the gentleman from Pennsylvania has suggested that rule 68 somehow has application here. I think he challenged me or someone on this side as to whether we support rule 68 or not.

I would hope he would revisit this important Federal rule, because it has nothing to do with this bill in terms of assessing attorney fees. It has a lot to do with assessing costs of the parties, but it does not apply to the consideration of attorney's fees that are taking up our time at the moment.

Second, Mr. Chairman, there is another additional reason why loser pays is not a highly desirable proposal that we codify into law at this time. It is true, we do have a Federal rule that permits the court to assess pay to any of the parties that he considers to be frivolous, upon a motion properly brought. But this bill changes the option that the court has to mandatory consideration, that the court will assess attorney fees in these kinds of situations.

It is there that I think we need to examine this vary carefully for the prejudicial impact that it has on plaintiffs who may be working-class people, and heaven help them if they are poor. They do not have anything to put up.

That gets to another point that has been made about cases that are being accepted without cost. They are seen on television advertised all the time.

First of all, an attorney is unlikely, after hearing a person come into his office, that he would accept a case that he does not see some merit in, because it would be a cost he would be bearing, so many of those cases are washed out. In a way, those attorneys are doing the bar a great service.

On the other hand, those that advertise that they will take tort cases without pay for a plaintiff are doing

the plaintiff a great service, because if a poor person does not have the means to pay for a lawsuit, he or she is then put upon to go through the entire list of dozens, sometimes hundreds, sometimes more than hundreds of lawyers to find out what office, what lawyer in which office, might entertain their case, assuming that they have merit.

Therefore, Mr. Chairman, it is very important that we understand that these kinds of cases exist; that poor people do have important tort claims; that they have no way of financing the attorney as they go along.

Mr. Chairman, let me turn to the goal of deterring frivolous lawsuits, which everyone would like to do, even without statistical information. Notice that this general debate, like the debate in the Committee on the Judiciary, has gone on without one statistic ever being cited to determine that this is the problem, none. Now the loser pays provision goes well beyond it.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. CONYERS] has expired.

(By unanimous consent, Mr. CONYERS was allowed to proceed for 2 additional minutes.)

Mr. CONYERS. Mr. Chairman, the loser pays provision now gives a wealthy party or a corporate party the power to slam the courthouse door shut in the face of a working class individual, or heaven help him if it is a poor individual, or an individual who was injured by the very claim that they are suing and seeking to get recompensed.

The proponents of the bill say that this measure will encourage the parties to settle, but our goal, however, should not be to encourage the parties to settle at any cost. The goal should be to encourage reasonable settlements with all parties on a level playing field.

This bill encourages unreasonable settlements in cases where the liability is a close question and there is great economic disparity between the parties. We are now turning the negotiating into rolls of the dice that neither party can accurately predict what will happen if the case is a close one.

Remember, we are not talking about cases with no merit, or cases that have a clear potential, we are talking about close cases, and close cases are the ones that are being forced to be settled at any cost.

Mr. Chairman, I think that is a very difficult proposition. I would like Members to know that former Senator George McGovern on television this week is now beginning to virtually recant the ads we have all been seeing. He said "I'm not sure Federal legislation is the way to go," and he disavows his remarks in the ad. I would say sorry about this, fellows, I know they wanted to rely on George McGovern to build their case here; that "frivolous lawsuits helped drive my small inn in and out of business."

Like most of those who claim that suits, not competition or other factors,

are the cause, he now says that that comment is an exaggeration, and that his biggest problem leading to bankruptcy was the economic national downturn that he and his competition with other hotels sustained.

Mr. MOORHEAD. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. Mr. Chairman, I rise today in support of H.R. 988.

I believe access to the courts is an intricate part of our freedom.

And so I would not want to discourage anyone with a legitimate case to seek a judgment for it.

But I do want to discourage the thousands of frivolous and senseless cases which cost taxpayers and consumers billions of dollars and bog down our courts.

And that is exactly what H.R. 988 will do.

H.R. 988 will encourage a complainant and a defendant to work out reasonable agreements and settlements before they seek court action.

From a logistical and economical perspective of the courts, it makes sense for both parties to work toward—and arrive at—a mutual agreement.

The issue here is whether or not it is our responsibility to encourage complainants and defendants to do that.

I think it is our responsibility.

If I am a complainant seeking \$100,000 in a case, and the defendant in my case offers me \$70,000 and I refuse it, and a jury awards me \$60,000, it makes sense that I should be required to cover at least some of their legal costs.

After all, had I taken the offer, I would have eliminated much of our legal fees and given the court more time to address other cases.

This legislation will send a clear message to greedy litigants and their lawyers who milk the system.

And that message is very simply this: Our judicial system and America's consumers and taxpayers will no longer pay for the selfish and greedy behavior at their expense.

Mr. Chairman, as an attorney, I can tell you we must reform our litigation procedures.

If we do not, we have only higher product costs and insurance rates to look forward to as well as a bogged down court system.

I urge my colleagues to support H.R. 988.

Mr. CONYERS. Mr. Chairman, I am delighted to yield 3 minutes to our distinguished colleague, the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I just wanted to comment on some of the things we have heard. We have heard about this poker game people are going to have to play in order to figure out whether to settle or not to settle.

Mr. Chairman, some of these cases are very difficult to evaluate. They are

impossible to judge by \$1 or \$2 or \$50. Sometimes you do not know exactly what to settle for. Some people just want their day in court. Whatever happened to that?

Mr. Chairman, we have heard a lot about what happens to people who are poor when they come to court. Let us talk about a middle-class person who happens to be just a regular homeowner, has a little money set aside for college education for the children, who has been ripped off in a real estate deal or been maimed in an automobile accident when they say they had the green light and the other side said they had the green light; your client knows that the light was green, but you do not know whether you can win that case or not when you discuss the case, whether to bring it with your lawyer, and he says, "You have a 70 percent or 80 percent chance of winning, but there is a chance we might lose the case and you will have to pay tens of thousands of dollars for the other side for their attorney's fees for having brought the case that you thought that you were in the right;" you are going to lose your house, you are going to lose the money you have set aside for the college education for your children.

You are there in a position where you do not know whether or not you can even afford to take the chance, the outside chance, that you might lose the case. That is what this loser pays does. It discourages the bona fide cases for people to have their day in court, middle class, poor, or otherwise.

It does not affect the corporations that can just put this as the cost of doing business. It affects the right of an average man or woman to have the courts mean what they say they mean, a place to vindicate your rights and to resolve disputes.

Mr. MOORHEAD. Mr. Chairman, I understand the minority has no further speakers.

Mr. CONYERS. Mr. Chairman, I would ask now much time we have remaining on both sides.

The CHAIRMAN. The gentleman from California [Mr. MOORHEAD] has 19 minutes remaining, and the gentleman from Michigan [Mr. CONYERS] has 24 minutes remaining.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am in possession now of a letter that has been sent to the Speaker of the House from the Attorney General of the United States, Janet Reno, as well as Abner Mikva, counsel to the President, which I will include in the RECORD. I would like to quote one part of it.

First, we believe that fee-shifting provisions such as that in H.R. 988 are unfair, unnecessary, and unwise. That provision would, with limited exceptions, require the court to order one party to pay attorney's fees of another if the former did not secure final judgment more favorable than offered by the latter.

While such fee-shifting may be appropriate in some contexts, a blanket fee-shifting rule would work a significant injustice, particularly against parties that have fewer re-

sources. Such a loser pays rule is alien to the American legal system, and we know of no empirical evidence that such a rule would address the primary problems facing our civil justice system, the slow pace and high costs of justice.

I hope our colleagues will consider this as we move forward.

The letter referred to is as follows:

OFFICE OF THE ATTORNEY GENERAL,  
Washington, DC, March 6, 1995.

Hon. NEWT GINGRICH,  
Speaker of the House, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This week, the House of Representatives is expected to consider legislation that would significantly reform the American legal system. While we believe that our legal system can and should be improved, several provisions that the House is likely to consider are deeply problematic; therefore, we write to express our concerns and reservations about several of those provisions.

Our comments divide into three sections, but are by no means exhaustive on this subject. Instead, we focus on provisions that, based on our extensive legal experience, are simply too extreme—provisions that are unfair and tilt the legal playing field dramatically to the disadvantage of consumers and middle-class citizens.

First, we believe that fee-shifting provisions such as that in H.R. 988, are unfair, unnecessary, and unwise. That provision would, with limited exceptions, requires a court to order one party to pay the attorney's fees of another if the former did not secure a final judgment more favorable than offered by the latter. While such fee-shifting may be appropriate in some contexts, a blanket fee-shifting rule would work a significant injustice, particularly against parties that have fewer resources. Such a "loser pays" rule is alien to the American legal system and we know of no empirical evidence that such a rule would address the primary problems facing our civil justice system—the slow pace and high cost of justice.

Second, several of the provisions concerning product liability in H.R. 1075 are also unfair and unjustified. As a general matter, we believe that product liability reform should be enacted by the States, rather than by Congress. This area of law has traditionally been the purview of State courts and legislators; if changes are needed, those changes should generally be left to the States. In fact, product liability is one area in which States truly have served as "laboratories of democracy"—over the last twenty years virtually every State has significantly reformed its legal system as it relates to product liability.

We find certain of the preemptive provisions under consideration particularly puzzling in light of the contemporary and ongoing debate about the extent to which the Federal Government has usurped responsibilities that appropriately belong to the States. On issue after issue, broad bipartisan groups have emphasized the advantages of devolving authority to State and local governments. As in other spheres of government, proponents of Federal restrictions on traditional State and local prerogatives bear a heavy burden of persuasion in justifying new Federal intervention. For several provisions in particular, we believe that that burden has not been met.

For example, we believe that the preemption of State law to establish differential treatment of "economic" and "non-economic" losses is both unjustified and unsound. This provision (section 107 of H.R. 1075) would severely and unfairly prejudice, among others, elderly citizens, plaintiffs

whose losses include pain and suffering, and women who suffer loss of their reproductive ability.

We are equally critical of section 201 of H.R. 1075 which establishes an arbitrary formulaic limit on punitive damages. Virtually all parties agree that, in certain rare circumstances, punitive damages are appropriate: occasionally, an award of punitive damages is the only way to bring an offender to justice, or to keep a dangerous product off the market. While every State maintains judicial controls to revise or reverse punitive-damage awards, there is not any *a priori* basis for fixing a ceiling on the award of punitive damages, measured either by a dollar amount or as a multiple of compensatory damages; instead punitive damages are and should be imposed based on the facts and circumstances of the particular claim.

Perhaps most disturbing of all is the fact that section 201 would mandate certain procedural rules in every civil action filed in Federal and State court. This provision—even more than those limited to product liability actions—represents a disturbing and unprecedented federal encroachment on two hundred years of well-established State authority and responsibility.

Third, with regard to reforms of the Federal securities laws, we share the concerns articulated by SEC Chairman Levitt. In this Federal regime, congressional activity is more appropriate, and we agree with the Chairman that the securities-litigation system can be improved. Our securities laws must encourage innovation and investment, while at the same time deter white-collar crime and ensure the integrity of the financial markets. The experience of the past decade has shown that taxpayers and honest business people can suffer greatly from fraud and improper behavior. We support reasonable reforms to this system but believe that certain provisions in H.R. 1058 are problematic, while others are manifestly unfair and could lead to inadequate deterrence against financial fraud. We hope to work closely with Congress and the SEC to address these concerns so that sound legislation can be enacted to correct the problem of frivolous suits and enhance the integrity of the securities markets.

In closing, we would emphasize that we believe that our civil justice system can and should be reformed—but reform must be fair to all parties and respectful of the important role of the States in our Federal system. We have some ideas that would be constructive. While we oppose the particular provisions mentioned above, we look forward to working with the Congress to develop thoughtful and balanced reform of the American legal system.

Sincerely,

JANET RENO,  
Attorney General.  
ABNER J. MIKVA,  
Counsel to the President.

□ 1600

What we are suggesting in this bill before us now in terms of whether someone should be punished for bringing a suit that may turn out to be meritorious is that we are saying here that we are going to pass a law in the Congress that says that people with no money must sit on their rights for fear that they will be totally bankrupted in the event they lose the suit. That is precisely what this bill is about that is before us today. And that if they hesitate for a lengthy enough period, the statute of limitations will kick in and

their claim will have expired because it was not timely brought.

What is a working person to do? Forget a person that has no money and cannot even put up anything or lose anything or lose their bank accounts or their home. But what about a working person gambling on pursuing a lawsuit, if he could be exposed to paying both his attorney's fees and the defendant's fees? The answer is obvious, that he is going to hesitate.

Why is it that we are going after working people, someone earning \$30,000 should now be caught up in the claim that the wave of litigation must now be somehow subsidized by making them pay both attorney's fees of all parties in the event that they do not succeed?

Let us look at a typical case that might be brought to an attorney's firm. What if a person sought to become a plaintiff and thought that there was a 70-30 percent chance that he would prevail. Under the current law, a person could be very justified in determining to go forward. But under H.R. 988, he would be very prudent to hesitate and perhaps decide not to go, because he is not going to win. He may not win. And why should he risk this huge loss under these circumstances?

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California, the distinguished subcommittee chairman, and the floor manager of the bill.

Mr. MOORHEAD. First if he is as broke and poor as you say, of course, I would not want a judgment against him because it would not be worth very much. But there is a provision in the law that we are promoting that says if it would be manifestly unjust, the court does not have to order those attorney's fees.

Mr. CONYERS. You have another provision where we are changing the law from "may" to "shall."

Mr. MOORHEAD. But it still says that those class of expenses if they would be manifestly unjust, there is an exception.

Mr. CONYERS. Then I take it that the gentleman from California agrees with me that a working person bringing a suit where he thought he had a 70-percent chance of recovery would be under the gun if he had to go into court with the assumption that if he did not win, and he thinks he only has a partial chance of winning, that he would be stuck with attorney fees. Are you telling me that this bill would exonerate him from having to pay the defendant's fees?

Mr. MOORHEAD. If the judge determines that it would be manifestly unjust for him to order those fees, he can avoid them.

Mr. CONYERS. Why are you tightening the rope around the neck of a plaintiff, a working class plaintiff in the first place?

Mr. MOORHEAD. The rope is going to be around anyone that has money

far more than it is going to be around the neck of the working class person. I would rather have one judgment for fees against one man that had a little money than I would 10 or 50 or 100 that had none.

Mr. CONYERS. So would I, but that is not what is in the bill unfortunately. I quite agree. But why would we make this a more difficult lawsuit for a working person who thinks he might have a 70-percent chance than he already has? I mean, if it is a frivolous lawsuit, he is going to be subject to attorney fees under the present law.

Mr. MOORHEAD. All he has to do is to make a reasonable offer.

Mr. CONYERS. You are tightening the tourniquet. You are making it tougher on people to bring lawsuits. You are making it impossible for an injured person without means or resources who may have an excellent lawsuit to bring them at all because we keep talking about, what about a person that walks into a lawyer's office having read a television advertisement saying that he will take the case without any up front payment of attorney fees on a contingency basis? What is wrong with that?

The attorney that would take a case knows that if he does not have a reasonable case, he is not going to get anywhere, and he is not even going to get paid by his own admission.

So I would urge the gentleman to consider the harm that we are bringing to working people and people bringing tort suits who may be injured with meritorious claim but may not have the \$500 or \$1,000 or \$3,000 that an attorney might reasonably claim to start a suit.

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California.

Mr. MOORHEAD. We do not discourage people who have a just claim from filing a lawsuit, and we even give them the opportunity up to 10 days before the case would come to trial to make a reasonable offer of settlement, so that if they have a claim, they believe in their claim, they make a reasonable offer of settlement, and if it is not far above what is eventually ordered by the court, there will be no attorney's fees whatsoever.

Mr. CONYERS. I would like the rest of my colleagues that are a party to this bill to take into consideration the American Bar Association's evaluation of this measure.

They say that the "loser pays" bill as amended, although extensive revisions have been made to this legislation, to the legislation as introduced, and were made by the Committee on the Judiciary, "serious problems remain with the current loser pays provisions of H.R. 988."

"The case has not been made for jettisoning the tradition in this country of requiring each party to bear its own attorneys' fees. While some fee-shifting occurs under some State or Federal

statutes and procedures, the heavy burden of persuasion must rest on proposers of such variance from the American rule. The American Bar Association is particularly troubled because of the accelerated timetable under which H.R. 988 has been considered in the House. There has been no opportunity to have this debate.

"The ABA is concerned that H.R. 988 may undermine diversity jurisdiction and will surely encourage undesirable forum shopping. In addition, it imposes a requirement that is inconsistent with the American system of justice. Among the fundamental problems inherent in the current proposal is that it places an extra burden on the poor, the middle class, and small businesses who are entitled by law to choose a Federal forum. This extra burden is unrelated to the merits of their claims. Worse yet, its weight is involuntary when it falls on the poor, the middle class, and small businesses when they are brought to the Federal forum by a litigant much better able to bear the burden of possible fee-shifting. Any such procedure could only be justified if it provided safeguards to allow reasonable access to the Federal courts for all litigants and provided safeguards against an abusive misuse of the fee-shifting procedures. Unfortunately, the exemption and the relief provided for manifest injustice do not begin to level the playing field."

For shame, that out of the Committee on the Judiciary of the House would come a bill of such draconian magnitude that we are now asking working people, middle-class people, poor people now to bear the corporate defendant's fees if they do not win. There are too many good cases that are so close that not even the most skillful plaintiff's counsel or defense counsel can predict the outcome. There are too many variables. We see that in the history of civil litigation.

I am stunned by the punitive nature, the severity and the unfairness that is all rolled together in this one bill to say now that the historic tradition of the American system of justice should be jettisoned this week because we are tired of so many frivolous claims being brought.

I urge that the Members reject this bill and any of the feeble attempts to improve it that may ensue on the floor.

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

Mr. MOORHEAD. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I think that this bill has been totally misdescribed throughout the debate here. There are going to be far more people that have money, and have the ability to pay, that have to pay the other side's attorney's fees than will ever be able to be paid by these poor defendants that we keep talking about. I would surely much rather have an order for attorney's fees from some of the main corporations than I ever would someone that is as described in this bill.

We do not have a copy of the letter that supposedly came from the Attorney General's office, but I suspect they do not, also, understand what is in this bill, because it just is not as described in the letter that was written and I hope that we can get a copy of that letter.

Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the gentleman for yielding me the time.

The gentleman is correct. This bill has been very grossly mischaracterized by the other side. The whole purpose of this provision is to promote reasonableness in bringing lawsuits, reasonableness in settling lawsuits, and will have the ultimate effect of seeing more suits settled and fewer frivolous and nonmeritorious suits brought.

This will not have the effect of depriving anything from any plaintiff who brings a meritorious suit in court and it in fact will have, I think, a very positive effect on the cost of goods and services for people who are low income as well as the cost of insurance for people who are low income, auto insurance, homeowners' insurance, et cetera.

This bill is designed to say that you cannot come into court under the pretense that there is no risk to bringing a lawsuit. That is exactly what this does, and it counters the ads that we see time and time again in the Yellow Pages and elsewhere that say no recovery, no fee. That is, there is no risk to you to bringing a lawsuit. So come on in.

Well, there is a risk to society, there is a risk to defendants who are unfairly sued, and that is what this is designed to correct and it will correct it in a way that is fair by limiting the attorney's fees to just those 10 days before trial, through trial, and it will limit it to not more than the losing party pays their own attorney's fees so you do not have the possibility of a deep-pocket corporate party to a suit that wins the case overloading the other party with enormous attorney's fees that they cannot match. It cannot be more than they are paying their own attorney's fees, and for that reason I think this is an entirely reasonable provision that discourages suits from being brought that are nonmeritorious.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute.

I cannot help but respond to the gentleman from Virginia, a very well-known lawyer on the committee, that this is the kind of law that people, working-class people and poor people, have been looking to get a chance to help them bring their cases into court. I simply find that preposterous.

I think it goes against all of the testimony that we have heard before the committee. For him to suggest that this is just what working-class people need to get into court means that he has now thrown the bill out to the

winds and this is just a free-wheeling rhetorical debate.

□ 1615

The American Bar Association, whose letter I just recited, said that the bill would work a harm to just people that the gentleman thinks it would be a benefit to, and I remind the gentleman that the American Bar Association is made up of more defendants' lawyers than even plaintiffs' lawyers.

Mr. MOORHEAD. Does the gentleman from Michigan have further requests for time?

Mr. CONYERS. Mr. Chairman, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Chairman, we have the right to close the debate. I have one more Member who desires time. We will reserve our time.

Mr. CONYERS. Mr. Chairman, if the gentleman is reserving his time to close debate, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN], a distinguished former member of the bar.

Mr. DURBIN. Mr. Chairman, still a member of the bar but not practicing for about 12 years. But I want to tell my colleagues this a very dangerous concept that we are pushing in this bill. In the course of this week we are going to have two or three pieces of legislation.

I think the most important question any Member of Congress can ask when these bills come before the floor is a very simple one: Who wants this bill? I can tell Members who want a loser-pay bill: a defendant who, frankly, does not want to be in court in the first instance, and wants to make sure that he can discourage as many people as possible from going to court.

Are there frivolous lawsuits? Yes. Should they be weeded out? Of course. But there are an awful lot of people who do not have the means in their own personal savings or the wherewithal to go to court and to go there with an attorney in an attempt to try to get redress of their grievances. What we are talking about here is as fundamental as our Constitution, the basic rights of individuals, the rights of victims if you will, to come to court. I think all of us understand who practice law that over 90 percent of cases are settled now. This is not needed as an incentive to settle. Cases settle today, both sides try to reach an agreement and in the overwhelming majority of cases they do reach an agreement.

But what this is an attempt to do is to hang a blade over the head of the plaintiff in the closing days before trial and say, incidentally, if you guess wrong, if the jury does not go along with you, not only are you going to have your own expenses, you have to pay the corporation's legal expenses too from the date when they made their offer to settle. I think that is a sad thing.

I also think we ought to put in context what the Republican contract is talking for. At the same time as the Republican contract is taking away the

regulatory authority of the Government to protect consumers and individuals, the contract comes through the back door and takes away the rights of those same consumers and individuals to go to court. This is the first installment.

So we are leaving America's consuming public unprotected in both instances; first, from a regulatory agency which is trying to protect them and second, from their day in court which is their ultimate recourse.

I can tell my colleagues in the practice of law I had in Springfield, IL, most of my clients were working folks who came in and they had never filed a lawsuit before. Something had occurred in their lives, usually some personal tragedy, and they came to me asking for representation. If I told them up front that they had to pay all of their attorneys' fees going in, frankly, they could not have been there. If I told them also there was a chance if we could get a trial they would have had to pay the railroad's attorneys' fees that happened to have the railroad car that ran over and killed one of their loved ones, they might have thought twice about it.

That is what this is all about, this is who wants this bill. Corporate America wants this bill; they want to discourage individuals from bringing actions against big corporations, from beginning to even bring actions against those who have deep pockets, and let me tell my colleagues quite honestly if we go along with this and go back to the British system of loser pay, which they are having second thoughts about at the same time, is a very big mistake, a very serious mistake for the future of this country.

Mr. CONYERS. Mr. Chairman, how much time remains on my side?

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] has 8 minutes remaining.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, one of the complaints that has been lodged against this bill is the unreasonable haste with which it has been brought out of the Committee on the Judiciary, which has five or six of the items of the contract of America which are now being given precedence in the House. And unfortunately the original bill provided that the losers to any claim pay the attorney's fee of the winner. It applied to all of the fees in the case, at least as to that claim and was not tied to any offer whatsoever.

Then we had the modest improvement by the gentleman from Virginia, the famous Goodlatte amendment, which made the bill less worse. It adopted a rule 68 type settlement offer. The loser pays the winners' fees after the date of an offer, and the losing means not doing better than the offer. The award is limited as in the original bill to the plaintiff's own attorney fees, and we are in a real roll of the dice in terms of whether a person can make an

offer based upon their outcome. All of which presumes that plaintiffs' lawyers and defendants' lawyers know how these cases are going to come out, which in many instances, particularly if the case is not an open and shut one, is the last thing that any of the parties knows. It is an improvement over the original bill.

Now I am told by the gentleman from Pennsylvania [Mr. GEKAS] to look to my own State for the Michigan-type awards where they split it down the middle and do not get into the crap shooting deal of who made the right offer at the right time so that they would have less attorney's fees to pay.

What we have is an unlevel playing field where the party with more wealth can engage in pursuing a contest against the party with less wealth, no matter how meritorious their claim might be to bring this matter forward and it puts plaintiffs at peril, it puts plaintiffs at peril. It jeopardizes the civil adversarial process that we have honored for so long.

This is yet another provision within the contract with corporate America that we are so anxious to have raised at this time.

I will tell Members one other thing. This is going to jeopardize civil rights lawsuits, and there has been very little said about that at this point, but it is very, very, important that we understand that rule XI is going to impact upon the 1983 Federal rule.

I just want my colleagues to know that the critics are claiming that the infamous 1983 amendment to the Federal Rules of Civil Procedure has turned into a tool for judges and defendants to punish those who pursue unpopular causes of action. Two recent cases show how this can happen, and a lawyer may be litigating at his or her own peril when they are suing the government inside the Federal court, according to some of the lawyers that have been bringing civil rights cases for a lot of time. It is inhibiting civil rights cases which ought to be a new cause for concern to many of us in this Chamber who remember with what difficulty and what great sacrifice we were able to bring civil rights suits to litigation in the first place.

Actions under civil rights based on gender, race or religious freedom could be made infinitely more complex to bring and could further inhibit attorneys representing plaintiffs in this very, very important area of Federal law.

I urge my colleague to please examine this fairly. This is not a matter of being a Republican or Democrat, this is a matter of how the judicial system will work for ordinary people in America. I say the time has finally come in this contract for us to do something for the working people, for the people who will be put in peril in having to bring these suits under the strictures that would now require them to mortgage their home, spend their children's college fees or to make outrageous loans

in pursuit of what they consider to be a fair claim.

Please let us examine and turn back the bill and the premises underlying H.R. 988.

Mr. Chairman, I yield back the balance of my time.

Mr. MOORHEAD. Mr. Chairman, I yield the balance of my time to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. Mr. Chairman, I thank the distinguished subcommittee chairman for yielding me this time.

Mr. Chairman, I rise today in strong support of this Attorney Accountability Act. This is truly a historic day in the life of this body; for the first time in 40 years we have a comprehensive tort reform bill before the House. I commend the chairman of the subcommittee, the chairman of the full committee, the gentleman from Illinois [Mr. HYDE], the gentleman from Virginia [Mr. GOODLATTE], and others who worked to produce this bill.

With all due respect to the distinguished ranking member who brings the letter from the American Bar Association, the defenders of the status quo here, and says that we are operating with unreasonable haste by bringing this bill to the floor, Mr. Chairman, this debate has been raging in America for 40 years. Real people in the real world are finally getting heard in the People's House. They are saying enough is enough with an out-of-control legal system. Last year alone 20 million new lawsuits were filed in America. That is one lawsuit for every 10 Americans, 20 million suits in 1 year.

We have been conducting this debate for 40 years. The difference is with the new Republican majority we are finally getting a bill heard and getting it to the floor, and hopefully with bipartisan support as with the other bills in the Contract With America, this bill will pass this body.

The loser pays rule, more appropriately called the fairness rule, is central to the bill before us today, the Attorney Accountability Act. We are trying to restore accountability and fairness to our civil system. We must, must, discourage the filing of frivolous lawsuits and promote the settlement of a strong case.

The distinguished ranking member talks about those people who are indigent, without resources, not having their day in court, and brings the letter from the American Bar Association singing the same tune.

Well, Mr. Chairman, it is right in the bill, right in the bill; if the court finds that requiring the payments of such costs and expenses would be manifestly unjust, then they are waived. Then there is no requirement that the loser pays, if there is a manifestly unjust result. So that, Mr. Chairman, is a red herring.

Let us get down to the nitty-gritty of this debate. Why should prevailing plaintiffs have to give up a substantial proportion of their damage awards to

pay their own attorneys? Such deserving parties, people who are truly deserving of awards, are never, never fully or adequately compensated for their injuries under the present system and thus just basically wrong.

Seventy years ago, Mr. Chairman, the Massachusetts Judicial Council criticized this inequity and they asked on what principal of justice can a plaintiff, wrongfully run down on a public highway, recover his doctors' bills but not his lawyers' bills, and why should defendants who are dragged into court for unwarranted claims also have to pay substantial legal fees? These defendants, Mr. Chairman, lose, even when they win, and that is wrong. For many defendants, we all know the game that is being played out there under the rule. It makes more economic sense to settle these frivolous cases than to defend themselves in a prolonged lawsuit despite full confidence in their legal position. This practice hurts all of us because it motivates the filing of more frivolous claims and we pay.

That is why, Mr. Chairman, I was so pleased that the Committee on the Judiciary modified and improved the fairness rule that was contained in the original H.R. 10.

I also want to thank all of those who participated in drafting this common sense legal reforms act.

□ 1630

Mr. Chairman, I chaired the task force which drafted this bill, and so many people on our side of the aisle contributed to this effort, and I want to thank all of them for crafting this important legislation, particularly the gentleman from Virginia [Mr. GOODLATTE], who crafted the modification of the loser pays or the fairness rule.

I think the most important change in the modification is the definition of who is the winner and who is the loser of a case that goes to trial. That has been clearly articulated here today.

I think it is also important to emphasize, Mr. Chairman, that under this bill before us today, H.R. 988, only a party that acts irresponsibly by rejecting reasonable settlement offers will have to pay the attorney's fees of the other party and, of course, H.R. 988 does more than just adopt the fairness rule.

Most of the discussion here today and, in fact, in the ensuing months since H.R. 10 was drafted has centered on the loser-pays rule, but there is much more to the bill before us today.

The second major provision, the honesty-in-evidence provision, will ensure that we keep junk science out of the courtroom, too many so-called experts peddling their biased testimony for contingency fees.

Mr. Chairman, all we are doing with this provision, this honesty-in-evidence provision, is codifying the Daubert

case, which requires that expert testimony rest on a reliable foundation and that it be relevant to the task at hand.

This bill, Mr. Chairman, prevents experts from being paid a contingency fee so as to remove incentives for their biased testimony. If we want losing parties to accept verdicts that go against them, we must make sure that trials are fair. The honesty-in-evidence provisions will ensure just that, fairness.

The bill before us, H.R. 988, the Attorney Accountability Act, restores the pre-1993 version of rule 11 as has been mentioned here today of the civil procedure rules.

Mr. Chairman, this rule can be one of the most effective means of curbing lawyer misconduct if we give it back its teeth.

Now, I am still amazed as a lawyer formerly in practice myself that the rule was weakened in 1993 when the rule had the support of a strong majority of Federal judges who were surveyed by the Federal Judicial Center. In fact, Mr. Chairman, at that time, with respect to rule 11, 95 percent of the judges said the old rule did not impede development of law. Seventy-two percent of the judges said the benefits of rule 11 far outweighed the expenditure of their time. Eighty-one percent of the Federal judges said that the overall effect of rule 11 had a very positive impact on litigation in the Federal courts. And most telling, over 80 percent of the judges said we should retain the original rule 11. That is what we are trying to do here today is to restore that form of rule 11.

H.R. 988, the bill before us today, will reestablish the system of mandatory as opposed to discretionary sanctions which is very, very important in restoring accountability on the part of lawyers in our system.

Also, Mr. Chairman, the bill mandates the use of attorney's fees as part of this sanction.

Third, it puts a larger emphasis on the rule's compensatory function by clarifying the sanctions should be sufficient to deter repetition and to compensate the parties that were injured.

Finally, it eliminates a safe-harbor provision of the current rule 11(c) which permits a lawyer to withdraw a challenged pleading without penalty prior to an award of sanctions. Clearly, clearly the rule should be solicitous of the abused, not of the abuser.

Mr. Chairman, I am also pleased that this bill would return to the pre-1993 practice of having rule 11 apply to discovery.

Mr. Chairman, in conclusion, when you look at the various elements of the Attorney Accountability Act, I predict we are going to again have a large bipartisan vote in favor of this important reform legislation. Why? Because this legislation finally, finally gives us real tort reform, finally brings us concrete steps to restore accountability, efficiency, and fairness to our Federal civil justice system.

Mr. Chairman, in closing, I urge strong support of the Attorney Accountability Act of 1995. Let us have this real tort reform which is so long overdue.

Ms. HARMAN. Mr. Chairman, I rise today in support of the Goodlatte amendment. While I had intended to offer an amendment to H.R. 988, Mr. GOODLATTE's amendment has alleviated many of my concerns about the timing of settlement offers and the process of calculating attorneys' fee awards under the bill. I therefore do not plan to offer my amendment.

As reported, H.R. 988 carries with it the potential for abuse. Under the bill, defendants may respond to lawsuits by immediately making low-ball offers, even as low as \$1.00, simply to set in motion the time clock on which attorney fees are calculated. My amendment would have addressed this problem by requiring only reasonable, good faith offers to trigger the bill's fee-shifting provisions.

The Goodlatte amendment also addresses this problem by tolling the calculation of attorneys' fees until after the date of the last offer by a party. Since parties would not be able to use low-ball offers to set the attorneys' fees' clock in motion, I am confident that the Goodlatte amendment will spur good-faith bargaining rather than procedural gamesmanship.

More good-faith settlements will cause more lawsuits to be voluntarily dismissed and will help restore some efficiency to our Federal legal system.

Mr. HYDE. Mr. Chairman, I rise in support of H.R. 988, the Attorney Accountability Act of 1995. I would like to congratulate the gentleman from California [Mr. MOORHEAD], chairman of the Subcommittee on Courts and Intellectual Property, for his outstanding efforts in connection with this legislation. H.R. 988 effectively tackles one of the fundamental problems in our legal system today: frivolous litigation.

Mr. Chairman, the American legal system does not resolve claims as expeditiously as it should. Why? Because some who participate in the litigation process do not act responsibly. Parties are too quick to bring suit because they have nothing to lose for bringing even meritless claims. Attorneys, hoping for settlement amounts based on nuisance value, assist in encouraging possible litigants. One need only turn on the television late at night or turn to the lawyer section of the yellow pages to see incentives employed by such attorneys which, without measures to ensure accountability, serve to feed the lawsuit frenzy which plagues our Nation.

Our system of justice has also lost some of its integrity by allowing the consideration of invalid and unreliable scientific evidence from so-called experts which may unfairly influence juries and other triers of fact in their crucial roles of deciding the outcome of a case.

The legislation before us today will accomplish three goals. First, it will lessen the incentive to litigate claims which have little or no merit through the implementation of a loser-pays rule. Second, it will assure the reliability and validity of scientific evidence in cases involving such evidence. Third, it will prevent attorneys from filing frivolous lawsuits by appropriately imposing mandatory sanctions on those attorneys.

This legislation will infuse greater fairness into the civil justice system—because parties and attorneys will be held accountable for their

actions and are encouraged to be reasonable within the litigation process. It will also provide for prompt, easier, quicker access to our court system by decreasing docket congestion and encouraging the speedy resolution of valid claims. The result will be greater affordability and justice for all Americans with real and viable grievances.

The loser-pays rule in section 2 reflects an amendment adopted by the Judiciary Committee, sponsored by the gentleman from Virginia [Mr. GOODLATTE], who should be commended for his hard work. It fully achieves the goals we promised in the Contract With America—greater accountability, practical penalties for unreasonableness, and a settlement-based mechanism which will serve to eliminate many suits before they reach trial. Under H.R. 988, parties are allowed to discover the merits of their claims, but will be required to pay the opposing party's attorney's fees if they fail to act reasonably in settling a lawsuit or if they continue to pursue a frivolous claim. A litigant with a strong defense can rely on the protection of the loser-pays rule by placing a fair offer on the table. The more reasonable the offer, the more likely the adverse party to a claim will have to pay the attorney's fees. A plaintiff who unreasonably maintains a meritless claim or refuses to settle a claim who fares worse at trial or after judgment than the offer of settlement, will incur the defendant's fees. Likewise, an unreasonable defendant who refuses to settle or meet the claim of a plaintiff will have to pay the plaintiff's fees if after trial or judgment he fares worse than an offer made by the plaintiff. This mechanism has, built within it, incentives which encourage reasonable negotiation toward resolution along with a safety net for cases in which it would be grossly inequitable to apply the rule. Further, if both parties are unreasonable, the status quo is maintained and neither side receives the benefit of the rule. It is a fair, just, and workable loser-pays rule that is drafted to accomplish accountability while taking into account the unique history of negotiation which has long been a staple of American jurisprudence.

The honesty in evidence contained in section 3 of H.R. 988 will mark a significant change in product liability and other civil cases where scientific evidence is frequently used. As we all know, it can be very difficult for juries to fully gauge and evaluate the quality and validity of the scientific evidence presented. And while we all agree that America's jury system is by far the best method of evaluating tort claims, it is imperative that where difficult technical and scientific proof is to be considered, juries know such proof will be reliable, valid and relevant. Otherwise, the risk of prejudice is too great.

Plaintiffs' attorneys have had it too easy, Mr. Chairman. The same attorney who may implore the consensus of the scientific community for one case will employ a so-called expert in another who, on the basis of new or fringe scientific methods, ups the ante in a case to the detriment of a defendant. The market for so-called expert witnesses in this country is vast and growing, a market created by parties and attorneys who may employ any method to reap large financial awards at a huge cost to the American consumer. While no one wishes to deny a plaintiff with a valid claim from proving his case, accountability demands that cases be proven properly.

Section 3 of H.R. 988 will disallow the admission of scientific evidence by a judge unless such evidence is shown to be valid, reliable, and scientifically connected to the fact it is offered to prove in a case. This standard was established by the Supreme Court in *Daubert versus Merrill Dow Pharmaceuticals* in 1993, and should serve to weed out prejudicial evidence which could otherwise be used unfairly to persuade triers of fact. Further, under the bill, expert witnesses will be barred from testifying if they have any stake in the outcome of a case. Providing for integrity in expert witnesses is another important part of restoring accountability to litigation in American courts.

Section 4 of H.R. 988 will impose mandatory sanctions on attorneys who knowingly bring frivolous cases, reestablishing a significant and necessary deterrent on attorneys who encourage the filing of such cases in hopes of achieving financial gain on settlement value alone. The bill will amend rule 11 of the Federal Rules of Civil Procedure to bring back vital protections against the filing of thoughtless, reckless and harassing pleadings which have contributed to the demise of our civil justice system and which cause unfairness to those who are dragged into courtrooms without proper cause. Under the new rule, abusers who file lawsuits must be appropriately sanctioned by judges if found to be in violation and are provided no safe harbor to withdraw such filings. In effect, lawyers will be held accountable to do some research in advance, to evaluate cases before adding to limitless congestion of the courts and will face sure penalties for their misconduct.

Mr. Chairman, it is high time that Congress make clear to a nation fed up with inflated legal costs, long delays for viable claims and abusive tactics by lawyers, witnesses and opportunistic litigants, that we are ready and willing to take action to ensure that our legal system will operate fairly and expeditiously. Judges likewise need to be required to impose sanctions against abuse. We should no longer tolerate frivolous filings. H.R. 988 contains fair, responsible measure which will encourage accountability and, when necessary, sanction misconduct. I am proud to be an original co-sponsor of this measure which will restore confidence in our civil justice system and serve as a model to the states. It will provide to the American people what we promised when we signed the Contract With America, real and significant legal reform. I urge support of H.R. 988.

Mrs. COLLINS of Illinois. Mr. Chairman, this week in my GOP colleagues' mad, frenzied dash to the 100-day finish line of the so-called Contract With America, this body is being presented with a series of bills that will effectively strip away the rights of average, hard-working citizens to obtain access to our Nation's courts for the resolution of their legitimate disputes. Today we start with H.R. 988, the misnamed Attorney Accountability Act, which would be better titled the "No Money, No Status, No Justice Act of 1995."

H.R. 988 is an absolute perversion of the ideals upon which our civil justice system in the United States was established, Mr. Chairman. Filled with gimmicky, feel-good phrases such as "loser pays" and "honesty in evidence," this legislation is just another public relations ploy thought up by the Republican leadership's spinmeisters—as with the rest of

the contract—that has little substantive, factual evidence to support its propositions.

My friends on the opposite side of the aisle would like to have the American people believe that H.R. 988 is absolutely necessary to stem the tide of frivolous litigation that they purport is incapacitating our civil justice system. They advocate this overreaching legislation despite the fact that there are already tried and true penalties and sanctions in place which work quite well in weeding out the relatively few nonmeritorious lawsuits that do have occasion to find their way into our courts.

Unfortunately the only thing the bill before us today is meant to do and will do is further stifle the voices of America's middle and lower income aggrieved citizens in favor of the GOP's large corporate contributors and back-room-buddies. This is one more in a continuing pattern of shameful assaults on the underserved and underrepresented in our society by the majority party in the U.S. Congress, Mr. Chairman, and the American people have a right to know the facts.

Under H.R. 988, average citizens and small business owners seeking to bring suit against corporate wrongdoers would have to think twice about filing a claim, no matter how much they have been harmed because of provisions in this bill which would require, as I stated before, losing parties to pay the legal fees of the winners in many instances. As a result, as scholar Thomas Rowe has noted, "the threat of having to pay the other side's fee can loom so large in the mind of a person without considerable disposable assets that it deters the pursuit of even a fairly promising and substantial claim or defense."

This is hardly what our system of justice is all about Mr. Chairman.

It is interesting that earlier this year the prominent conservative magazine, the *Economist*, called for abandonment of Britain's loser-pays rules, because in that country only the very wealthy can afford the costs and risks of most litigation which offends one of the most basic principles of a free society: equality before the law. Apparently the majority sees nothing wrong with this. Well I, along with my constituents, sure as heck do.

But wait, Mr. Chairman, that is not all. Other provisions of H.R. 988 would subvert the Supreme Court's recent carefully construed framework for the judicial evaluation of scientific evidence, designed to curb abuses in the use of expert testimony. Again, these changes would be instituted for change's sake rather than because of any body of evidence indicating the need for such revisions. This House should not legislate just because we can Mr. Chairman, but because there is a need to do so. The GOP has yet to show any credible need for this legislation.

The American people do want accountability in all branches of our Federal Government—executive, legislative, and judicial. They do want commonsense, targeted reforms to many of our major societal institutions such as the civil and criminal justice systems. What they do not want and do not accept, however, is for so-called accountability and reform to come at the expense of their basic rights as citizens. H.R. 988, unfortunately, would do just that. Therefore, I appeal to my colleagues on both sides of the aisle to vote "no" on this legislation.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the bill is considered as an original bill for the purpose of amendment and is considered as having been read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 988

*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 "Attorney Accountability Act of 1995".

**SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FEDERAL CIVIL DIVERSITY LITIGATION AFTER AN OFFER OF SETTLEMENT.**

Section 1332 of title 28, United States Code, is amended by adding at the end the following:

"(e)(1) In any action over which the court has jurisdiction under this section, any party may, at any time not less than 10 days before trial, serve upon any adverse party a written offer to settle a claim or claims for money or property or to the effect specified in the offer, including a motion to dismiss all claims, and to enter into a stipulation dismissing the claim or claims or allowing judgment to be entered according to the terms of the offer. Any such offer, together with proof of service thereof, shall be filed with the clerk of the court.

"(2) If the party receiving an offer under paragraph (1) serves written notice on the offeror that the offer is accepted, either party may then file with the clerk of the court the notice of acceptance, together with proof of service thereof.

"(3) The fact that an offer under paragraph (1) is made but not accepted does not preclude a subsequent offer under paragraph (1). Evidence of an offer is not admissible for any purpose except in proceedings to enforce a settlement, or to determine costs and expenses under this subsection.

"(4) At any time before judgment is entered, the court, upon its own motion or upon the motion of any party, may exempt from this subsection any claim that the court finds presents a question of law or fact that is novel and important and that substantially affects nonparties. If a claim is exempted from this subsection, all offers may be by any party under paragraph (1) with respect to that claim shall be void and have no effect.

"(5) If all offers made by a party under paragraph (1) with respect to a claim or claims, including any motion to dismiss all claims, are not accepted and the judgment, verdict, or order finally issued (exclusive of costs, expenses, and attorney's fees incurred after judgment or trial) in the action under this section is not more favorable to the offeree with respect to the claim or claims than the last such offer, the offeror may file with the court, within 10 days after the final judgment, verdict, or order is issued, a petition for payment of costs and expenses, including attorney's fees, incurred with respect to the claim or claims from the date the last such offer was made.

"(6) If the court finds, pursuant to a petition filed under paragraph (5) with respect to a claim or claims, that the judgment, verdict, or order finally obtained is not more favorable to the offeree with respect to the claim or claims than the last offer, the court shall order the offeree to pay the offeror's costs and expenses, including attorneys' fees, incurred with respect to the claim or claims from the date the last offer was made, unless

the court finds that requiring the payment of such costs and expenses would be manifestly unjust.

“(7) Attorney’s fees under paragraph (6) shall be a reasonable attorney’s fee attributable to the claim or claims involved, calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney’s qualifications and experience and the complexity of the case, except that the attorney’s fees under paragraph (6) may not exceed—

“(A) the actual cost incurred by the offeree for an attorney’s fee payable to an attorney for services in connection with the claim or claims; or

“(B) if no such cost was incurred by the offeree due to a contingency fee agreement, a reasonable cost that would have been incurred by the offeree for an attorney’s noncontingent fee payable to an attorney for services in connection with the claim or claims.

“(8) This subsection does not apply to any claim seeking an equitable remedy.”.

### SEC. 3. HONESTY IN EVIDENCE.

Rule 702 of the Federal Rules of Evidence (28 U.S.C. App.) is amended—

(1) by inserting “(a) In general.—” before “If”, and

(2) by adding at the end the following:

“(b) Adequate basis for opinion.—Testimony in the form of an opinion by a witness that is based on scientific knowledge shall be inadmissible in evidence unless the court determines that such opinion—

“(1) is scientifically valid and reliable;

“(2) has a valid scientific connection to the fact it is offered to prove; and

“(3) is sufficiently reliable so that the probative value of such evidence outweighs the dangers specified in rule 403.

“(c) Disqualification.—Testimony by a witness who is qualified as described in subdivision (a) is inadmissible in evidence if the witness is entitled to receive any compensation contingent on the legal disposition of any claim with respect to which the testimony is offered.

“(d) Scope.—Subdivision (b) does not apply to criminal proceedings.”.

### SEC. 4. ATTORNEY ACCOUNTABILITY.

(a) SANCTIONS.—Rule 11(c) of the Federal Rules of Civil Procedure (28 U.S.C. App.) is amended—

(1) in the matter preceding paragraph (1) by striking “may” and inserting “shall”;

(2) in paragraph (1)(A)—

(A) in the second sentence by striking “, but shall” and all that follows through “corrected”; and

(B) in the third sentence by striking “may” and inserting “shall”; and

(3) in paragraph (2) by striking “A sanction imposed” and all that follows through “violation.” and inserting the following: “A sanction imposed for a violation of this rule shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of an order to pay to the other party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney’s fee.”.

(b) APPLICABILITY TO DISCOVERY.—Rule 11 of the Federal Rules of Civil Procedure is amended by striking subdivision (d).

### SEC. 5. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Subject to subsection (b), this Act and the amendments

made by this Act shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) The amendment made by section 2 shall apply only with respect to civil actions commenced after the effective date of this Act.

(2) The amendments made by section 3 shall apply only with respect to cases in which a trial begins after the effective date of this Act.

The CHAIRMAN. The bill will be considered for amendment under the 5-minute rule for a period not to exceed 7 hours.

During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition to a Member offering an amendment that has been printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as having been read.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. GOODLATTE

Mr. GOODLATTE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GOODLATTE: Page 3, line 20, insert before the period the following: “or, if the offeree made an offer under this subsection, from the date the last such offer by the offeree was made”.

Page 4, line 3, insert after “offer was made” the following: “or, if the offeree made an offer under this subsection, from the date the last such offer by the offeree was made”.

Mr. GOODLATTE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. GOODLATTE. Mr. Chairman, the purpose of this amendment is to enhance provisions of the bill that deal with making offers of settlement.

The way the bill currently reads, the parties can limit their exposure to attorneys’ fees by making offers of settlement. However, it is the party that makes their own offer that can cut off the exposure of attorneys’ fees for the other side, and we want to reverse that so that each party will have an incentive to make offers of settlement, because the more they offer to settle, the more likely it is they will be able to recover attorneys’ fees.

So by making this contingent upon the last offer by the nonprevailing party in a case rather than the last offer by the prevailing party, we will have the effect of allowing each party to make offers of settlement in order to cut off their exposure for attorneys’ fees.

Now, this exposure for attorneys’ fees can be limited to less than 10 days before trial through the trial itself, and, therefore there is a limitation on how long you can make these offers which cut off at 10 days before trial for the purpose of making sure that there are some risks attached to bringing a lawsuit which turns out to not have merit.

So I would encourage all of us who want to promote settlement of lawsuits and want to promote reasonableness to adopt this amendment. The effect of not changing this will be essentially to have parties having a disincentive to make additional offers of settlement, because if they can control when their opposing parties’ attorneys’ fee is cut off, they will have to add that additional calculation as to the worth of those attorneys’ fees in determining whether or not to offer a settlement, an increased settlement offer.

So, for example, if there is the likelihood of recovering \$10,000 of attorneys’ fees in a case and a party feels they have a 75 percent chance of winning, they may feel that they are not only making an additional offer of settlement but they are also giving up the value, whatever they may place on it, of those attorneys’ fees. We want to turn that around. We want the parties to have an incentive to make settlement offers so if we allow them to cut off their own exposure for attorneys’ fees through the date of that settlement, by making a settlement offer, we will accomplish our goal of encouraging more settlement in these cases.

Mr. CONYERS. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we began the debate and the amendment process by first of all amending the least worst part of this bill that loser pays all. Remember, we had an original bill. The original bill in committee provided for the loser as to any claim to pay the attorney fees of the winner. It applied to all fees in the case that applied to that particular claim, was not tied to any offer.

Wonderfully, providentially, the consciences of the new majority overcame them, and they accepted the Goodlatte amendment. The Goodlatte amendment, as it was debated in the committee, said that the loser pays the winner’s fees after the date of the offer if they come up the short side, and here is where the poker playing began. The person with the greatest resources usually can win in a poker game, especially when you are down to the last couple of chips.

Here we have the loser pays the winner’s fees after the date of the offer, and the losing means not doing better than the offer; the award is limited to the plaintiff’s own attorney fees or reasonable fee based on the hours spent by the plaintiff’s attorney.

This did make a mean spirited bill less mean-spirited. The problem was that the unlevel playing field, if one party has more wealth than the other, still obtains. I makes it highly risky to pursue a case where liability is in question, and that is what we continue here.

Now, fortunately, and I say that seriously, the gentleman from Virginia has found another error in this hastily

tacked together provision, because now he is suggesting that if the offeree made an offer under this subsection from the date the last such offer by the offeree was made, if the offeree made an offer under this subsection from the date that last such by the offeree was made, then he would be moving, advancing his cause, which changes considerably the plight of the offeree before this language was inserted. I am sorry that we did not find this out before now, but the problem is that these poker-game-like provisions in terms of negotiating offers being made by both parties are contingent upon the fact that one or both of the parties have some idea as to what the actual outcome is going to be.

I suggest to you that in personal injury and tort cases the outcome might vary widely from forum to forum. The outcome could vary very widely depending on whether there is a jury, or whether the judge is trying the facts and the law in the case, and now we are finding that there were other errors made.

To me, this improvement which is necessary to the logic that was intended by the gentleman from Virginia originally, does not cure the basic problem to the bill. We still have a bill that is going to be subjected to even more amendments to try to humanize it, to try to live down the reputation that it has so wholesomely earned as being an antiplaintiff's bill, an antiworking people's bill, an antipoor person's attempt to get into court, that it is a way of shutting the door down.

The whole provision is confusing. It is a trap for the unwary. I suggest to you attorneys are going to tear their hair out trying to figure out how they can game the system with this new Las Vegas type offer that can and now must be made if you are to protect yourself against being assessed the fees of the opposing party.

Ms. PRYCE. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the Goodlatte amendment and in support of the provisions on attorney's fees and costs which have been included in H.R. 988 and to commend my colleague, the gentleman from Virginia [Mr. GOODLATTE], for his hard work on this very fair legislation.

During consideration of H.R. 988 by the Committee on the Judiciary an amendment was adopted by a vote of 27 to 7. The amendment substantially modified the language governing awards of costs and attorneys' fees in Federal civil diversity litigation from a strict and onerous loser pays formula to a fairer, yet much needed, version. The Goodlatte amendment is designed to encourage settlement of legal disputes, to reduce the burden of frivolous claims on the Federal courts, and to provide full recovery to the prevailing party. It will not impose a barrier to filing of meritorious lawsuits, but will simply require plaintiffs to engage in

thoughtful and deliberate consideration of the substance of their claims before proceeding with costly, time-consuming litigation.

□ 1645

As a former judge, I saw my fair share of frivolous lawsuits, and I also saw my fair share of the collection of a good number of nuisance claims, and I know from years of impartial observation in courtrooms that this provision is evenhanded, fair, and will do the job.

I am pleased that the language has been included to provide the courts with latitude in determining awards of attorneys' fees and cost. Specifically, the bill stipulates that the court may decline to grant an award where the payment of such costs and expenses would be "manifestly unjust." In addition, the court is not required to make an award in cases involving a claim for equitable relief or in cases where the court finds that the claim presents a novel and important question of law or fact that substantially effects nonparties.

Mr. Chairman, H.R. 988 will encourage settlement of disputed claims, allows cases with merit to proceed more rapidly through the judicial process, and assures that plaintiffs' concerns are addressed appropriately.

Therefore, I urge my colleagues to support passage of this important legislation. In it are properties that will go far in addressing abuses we all know exist and that I have seen firsthand, yet it stops short of denying access to fair-minded litigants.

I urge adoption.

Mr. MOORHEAD. Mr. Chairman, I move to strike the requisite number of words.

You know, in the course of a debate on any bill, we strive to make the legislation as good as we possibly can. Every bill is amended along the way. This bill has changed somewhat in its form as members of the subcommittee and the full committee and now the people on the floor find ways that they may want to improve the legislation.

That does not mean that mistakes have been made; far from it, it means that a very good idea has been presented to the Congress that can be changed by many of the people that are present here.

Mr. GOODLATTE has a fine amendment here. His amendment improves the quality of the overall bill, and I certainly support it.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, this is indeed a part of the process of refining these bills and making them of such a nature that they try to be as fair as possible to all parties. But the real purpose here is to encourage settlement of lawsuits and discourage the bringing of lawsuits that do not have merit.

The CHAIRMAN. The gentleman from California [Mr. MOORHEAD] has the time, and he must remain upon his feet.

(On request of Mr. GOODLATTE and by unanimous consent, Mr. MOORHEAD was allowed to proceed for 5 additional minutes.)

Mr. GOODLATTE. Mr. Chairman, will the gentleman continue to yield?

Mr. MOORHEAD. I yield to the gentleman.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, this is, I believe, a very good model for handling the problem we have in this country with frivolous lawsuits, fraudulent lawsuits, and the fact that so many people are forced in the courts to defend cases that do not have merit and have to expend a great deal of money to do so.

The effect here will be to set a model that the State legislatures can look at to apply in the State courts. This only applies in diversity cases in the U.S. district courts. Earlier there was mention by one of the parties on the other side regarding the effect on civil right cases. This does not apply in Federal question cases, only on diversity cases in Federal court. Diversity cases make up about 20 percent of the Federal docket, and the Federal docket amounts to about 5 percent of all the lawsuits brought in the country.

So this will be a good test of whether the Congress has come up with a way to provide incentives for parties to be reasonable when they bring lawsuits. We do not want anybody in this country who has a meritorious claim not to bring that claim in a State or Federal court as they deem appropriate. But we want them to do so after they have fully evaluated the merits of a case. We do not want them to do so if their purpose is fraud; we do not want them to do so if the purpose is to be frivolous.

This will have the effect of making them think about that before they bring the action, and it encourages reality in these cases by requiring that the parties understand that they have an obligation to negotiate settlement resolution of these cases in good faith; that they not tie up our Federal court system with a case that really should be settled.

By having this mechanism whereby if a party makes an offer to settle the case, as this amendment provides, they can have the ability to reduce their exposure for attorneys fees by doing that up until 10 days before trial. We will promote that settlement opportunity.

So, again, I urge my colleagues to support this amendment and to support the underlying bill.

Mr. MOORHEAD. Mr. Chairman, as we come to the end of the debate on this very important amendment, I cannot help but look at the clock and see that we still have 10 minutes more to use before the 5 o'clock period when we can have votes on the floor. So, it

would be helpful if I can yield some additional time to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding further.

In terms of looking at this provision in this bill from the standpoint of the effect that it will have on the plaintiff in a case, I think that it has a great deal of merit for the plaintiff as well, because the effect will be to say that if you indeed do have merit to your case, if you know that the defendant in this case is liable for a harm that has been caused to you, you know there is going to be increased pressure on that defendant to settle the case because that defendant will then be put in the position of knowing that they will have to pay the plaintiffs' attorney's fee if the plaintiff prevails.

So, this is not something that is in favor of defendants as opposed to plaintiffs or in favor of corporate defendants as opposed to individual plaintiffs or individual defendants.

This will have the effect of making everybody who looks at a case, looks at it carefully, makes a study of the case and understands that when the defendant takes a case into court they will have to always bear the cost of their attorneys' fees. No longer will we have a situation where we will read in the telephone books of the country, no recovery. If there is no fee, there is no recovery. In other words, there is no risk for bringing a lawsuit.

There should be a risk for every party in the case. There also should be a reward for everybody in the case if they are reasonable in their approach. When a plaintiff has a good case and a deep-pocket defendant is refusing to settle the case because they are a deep pocket, this plaintiff who knows that he has the case will be able to force that defendant to act because the defendant will know that they will ultimately face attorneys' fees for their failure to act.

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Illinois.

Mr. DURBIN. I thank the gentleman for yielding.

Mr. Chairman, I would like to ask the gentleman from Virginia his experience. Mine, in Illinois, was that 90 to 95 percent of all the civil cases filed settled before they went to trial. That suggests to me that if the goal is to find settlements, the system is currently doing that in most cases.

Is the gentleman's experience different?

Mr. GOODLATTE. Well, I would say to the gentleman, the comments of a member of his own party, George McGovern, who in 1972 was a presidential candidate, he says in an article out this weekend calling for a reform of our judicial system, that one out of four suits brought in court are either frivolous or fraudulent. If that is indeed the case, then we have a serious

problem with cases that are being brought that are not meritorious.

Mr. DURBIN. If the gentleman will further yield, I do not question that some percentage of lawsuits are frivolous; 25 percent, if that is accurate, is a very high percentage. I think he may overstate it, but perhaps he has reason to believe that is the case. But that is part of the system that we have, an open system. We really do not screen candidates for public office. There are frivolous candidates for public office who run too. They are put on the ballot, they are given their day in court of the electorate, and they may be rejected. The same is true for many of these lawsuits.

The question is whether you want to close down the democratic nature of this process and keep the people out who really should be part of it. This is a voice for many—

Mr. GOODLATTE. I do not think it has that effect at all because, as I said earlier, if the plaintiff's case has merit, that is going to put greater pressure on the defendant to settle case because they know that if they lose the case, they are going to pay attorney's fees.

Furthermore, because of the settlement mechanism that has been added into this bill, the effect is going to be to encourage a greater number of settlements.

I would hope we would settle—if it is 90 percent now, I hope we get to 99 percent. There is always a reasonable position somewhere in the middle of these cases, and we want to have these parties to have every pressure possible to find that reasonable ground and keep them from tying up our courts with cases that do not need to be there if the parties would act rationally and settle them.

Mr. DURBIN. The gentleman responded relating to frivolous lawsuits. But back to my original question: What is the gentleman's experience on the percentage of cases presently filed, civil cases that are settled before they go to trial? What has been the gentleman's experience?

Mr. GOODLATTE. I do not have a figure. I would say it is a high percentage.

Mr. DURBIN. Ninety and ninety-five percent?

Mr. GOODLATTE. It is a high percentage. The question is what percentage of cases we have in Federal courts now that can be removed from the court system if there is a penalty for bringing a frivolous or fraudulent case? If that indeed is 25 percent, that is a substantial reduction. I think it would be greater than that.

Not only will frivolous and fraudulent cases be settled, but in some cases where there is merit in the case that the parties have not been able to get together, they will get together because of the increased risk involved in the case and nonmeritorious cases will be settled or dismissed before somebody takes the risk of bringing an action all the way through the cost of the

judge, the jury, and everybody else that has to be involved, and all the time involved in the case. We can reduce those by encouraging settlement. I think this is a very good vehicle to do it.

Mr. WISE. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from West Virginia.

Mr. WISE. I thank the gentleman for yielding.

Mr. Chairman, the gentleman quoted Senator George McGovern. Does the gentleman agree with George McGovern on just about anything else?

Mr. GOODLATTE. Yes. As a matter of fact, I do. This case comes from an article that George McGovern wrote about his experiences with a business that he started in Connecticut, a hotel. George McGovern, a couple of years ago, was quoted as saying, "You know, I never realized until I was a small business owner, but regulations in this country are beating small businesses to death and we got to do something about it."

Now he comes along and says not only do we have to reform the regulatory process in this country but we also need to reform the judicial process to discourage the lawsuit industry, as he calls it.

Mr. SOLOMON. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from New York.

Mr. SOLOMON. I appreciate the gentleman yielding.

Mr. Chairman, I could also answer my friend's question because I never thought I would ever agree with George McGovern, who was the father of the philosophy that said big brother government knows best. I had the opportunity to sit next to him at a dinner the other night in which he went on to lament his former attitude about big government and how they could solve all the problems.

The gentleman mentioned that when he became a small businessman, all of a sudden he realized what all of these burdens do. And by tying up all of these entrepreneurial midsize businesses in court, it means that much less money that they can use for capital to expand businesses.

Remember, midsize and small businesses create 75 percent of every new job in America every single year for high school kids coming out of high school, for college grads. The gentleman is right on line, and we certainly hope his position prevails tonight.

Mr. GOODLATTE. I thank the gentleman for his comments.

Mr. WISE. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. I thank the gentleman for yielding.

Mr. Chairman, I think we are finally getting to the bottom of this matter.

We have had the gentleman from Virginia [Mr. GOODLATTE] really make it clear what he is after. First of all, he does not want any plaintiff to ever bring a lawsuit that he does not get charged for it, no matter what his economic circumstances. He said that.

That is, the responsibility of going into court; namely, you got to afford to be able to go into court and if you cannot, you have no business bringing the lawsuit. How meritorious it might be? It does not matter. How important is it that the injury complained of in the lawsuit is the reason that the person is impecunious and not working? Irrelevant. How important is a case that has obvious redeeming merit to it? Beside the point.

If the plaintiff cannot afford to pay his attorneys' fees, quote from the gentleman from Virginia, "He should not be in court because he is not a responsible party." That is why I am against this whole bill.

The argument of the gentleman from Virginia, his most recent remarks in attempting to repair the repair that he did to the original bill in committee, the Committee on the Judiciary, make it clear that this bill is an attack on the contingency fee, which you have a right to dislike or hate as you may feel.

□ 1700

I happen to think that it happens to be an important way for people to get a case brought that may have merit. The contingency fee is a primary avenue for ordinary people, for poor people, to seek a remedy in court when they have been harmed and do not have any money, do not have a bank account, do not have stocks or bonds, do not have a house that they can put up as collateral to secure an attorney to prosecute their cause of action. This bill effectively destroys the contingency fee system because it says that the poor person or the middle class person will have to put their savings, their home, at risk to get to court, and if they do not get to court, they have got to involve themselves in this great new poker game in which their attorneys will now have to bid, negotiate, bid appropriately, as if they all know what the outcome of a case is going to be, which in my experience has been just the opposite has been true.

So I think that even the attempts of the gentleman from Virginia at this late date to perfect the amendment lead me to oppose it, as I oppose the entire bill, and I hope that the Members of this House will reject this amendment.

Mr. WISE. Mr. Chairman, I thank the gentleman. I would like to continue.

As I do, Mr. Chairman, I would like to preface my remarks by saying that, yes, I did practice law before coming to the Congress. I think it should be noted that personal injury suits of any kind were not a part of my practice. In fact, I spent years trying to figure out what was my practice, and I know this was

not part of it, and so I do not necessarily have a stake in this in any way except to say that it is my observation that the only way some people are going to get to court is on the present basis.

As the New York Times noted in an editorial several days ago, what this bill seeks to do is to overturn 200 years of United States common law, common law that, yes, is different from the mother country, Great Britain, where the loser does pay, but we made a decision in this country years ago, centuries ago, to divert from that because we felt that there ought to be access to the courts for all.

I say to my colleagues, "There is a very plain reality that, if you're a middle income person, you're going to have to think twice before you bring even a meritorious suit because your attorney, if he or she is doing their job, is going to have to caution you and say, "I think you have a good case; it's a case I feel comfortable bringing," remembering that that attorney is not paid for the most part, that attorney is not paid, unless there is a victory. But if you should lose, if the jury by narrow margin should decide you lose, even though the merits were almost equally balanced, you can end up paying, and, yes, you can end up paying, you can end up paying the large insurance company, the large corporation, whomever, whose lawyers are running up a tab happily at hundreds of dollars an hour. That is an incredible risk.

I ask, "Do you risk your children's education? Do you risk your home? Do you risk your car? Do you risk your job?"

Mr. Chairman, I think people misunderstand if they think that—

The CHAIRMAN. The time of the gentleman from West Virginia [Mr. WISE] has expired.

(By unanimous consent, Mr. WISE was allowed to proceed for 3 additional minutes.)

Mr. WISE. So that is a considerable risk.

The other myth, I think, is that people enter into these suits lightly, thinking, well, I do not have to pay anything, and, therefore, I can just go down, retain a lawyer, and sort of like the lottery will buy a ticket, and see if we hit. That is not the way it works. There is a considerable amount of time, investment in effort, made, all from the person who is having to put forward their own expenses for medical examinations, that type of thing.

I would just urge there are some useful provisions to this legislation. I appreciate, for instance, in later pieces what they are trying to do to separate out in some cases of joint and several liability, or, in some cases, dealing with whether or not accountants should be made as liable in securities actions, but what I really just disapprove of here is making it so much more difficult for people to get to court in the first place.

The reality is that middle income people, poor people, are not going to be able to go to court as they once did, and I would urge, as much as the gentleman is trying to perfect this amendment, I urge rejection of the amendment, and certainly the bill.

Mr. WILLIAMS. Mr. Chairman, will the gentleman yield?

Mr. WISE. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Chairman, the gentleman prefaced his remarks by noting that he had practiced law before coming to Congress. I want to preface my remarks by saying I did not do that. I am not a lawyer—

Mr. WISE. The gentleman is the best of all to speak.

Mr. WILLIAMS. I preface it because I want to say that my profession was that of an educator, and, as a teacher, I have watched with growing alarm at the drum beat of attacks, some of it very personal, that has gone on, particularly this past decade and a half, against lawyers.

Attorneys are, in the American system, the arbiters of our justice. It is attorneys that develop the information which proves the guilty guilty and proves the innocent innocent, and I want to just take a minute of the gentleman's time to say that I believe the attack on attorneys, particularly trial lawyers of the past decade and some, is what drives the legislation here today, and I want to say further that my examination of this bill shows that it is toll road justice, it is deep pocket justice, it is means testing justice in America. It says, "If you're not rich, don't play."

Mr. Chairman, that is a terrible, terrible thing for this country to bend to, and I thank the gentleman for having yielded to me.

Mr. WISE. If I could add to that, "If you're not rich, don't play," that, "If you're very poor, you'll have to play."

Mrs. COLLINS of Illinois. Mr. Chairman, I rise in opposition to the Goodlatte amendment and urge a strong "no" vote from my colleagues.

This ill-conceived amendment effectively denies average, hard-working citizens the right to access our Nation's courts for the resolution of their disputes. Oppressive as this is, it does fall nicely in line with the rest of the punitive Contract With America.

Under this amendment, average citizens and small business owners seeking to bring suit against corporate wrongdoers would have to think twice about filing a claim, no matter how much they've been harmed because of its provisions which would require losing parties to pay the legal fees of the winners in many instances. Ironically, under the language of this amendment, the category "loser" would include even those parties who won their cases, but were compensated for their losses by the court at a level that is less than what they were offered for a settlement.

As scholar Thomas Rowe has noted, "the threat of having to pay the other side's fee can loom so large in the mind of a person without considerable disposable assets that it deters

the pursuit of even a fairly promising and substantial claim or defense.”

This is hardly what our system of justice is all about, Mr. Chairman.

It is interesting that earlier this year the prominent conservative magazine, the Economist, called for abandonment of Britain’s “loser pays” rules, because in that country “only the very wealthy can afford the costs and risks of most litigation” which “offends one of the most basic principles of a free society: equality before the law.” Apparently the majority sees nothing wrong with this. Well, I along with my constituents, sure as heck do.

Our Nation’s system of justice is based on the proposition that all Americans, regardless of income, should have access to this system. The Goodlatte amendment turns this proposition on its head and makes a mockery of our civil courts.

For these reasons, I urge rejection of the amendment.

The CHAIRMAN. The time of the gentleman from West Virginia [Mr. WISE] has expired.

The question is on the amendment offered by the gentleman from Virginia [Mr. GOODLATTE].

The question was taken; and the chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 317, noes 89, not voting 28, as follows:

[Roll No. 200]

AYES—317

Archer	Christensen	Foley
Army	Chrysler	Forbes
Bachus	Clayton	Fowler
Baker (CA)	Clement	Fox
Baker (LA)	Clinger	Frank (MA)
Baldacci	Coble	Franks (CT)
Ballenger	Coburn	Franks (NJ)
Barcia	Collins (GA)	Frelinghuysen
Barr	Combest	Frisa
Barrett (NE)	Cooley	Funderburk
Barrett (WI)	Cox	Furse
Bartlett	Cramer	Gallegly
Bass	Crane	Ganske
Bateman	Crapo	Gejdenson
Beilenson	Cremeans	Gekas
Bentsen	Cubin	Geren
Bereuter	Cunningham	Gibbons
Berman	Danner	Gilchrest
Bevill	Davis	Gilman
Bilbray	de la Garza	Goodlatte
Bilirakis	Deal	Goodling
Bishop	DeFazio	Gordon
Bliley	DeLay	Goss
Blute	Diaz-Balart	Graham
Boehert	Dickey	Green
Boehner	Dicks	Greenwood
Bonilla	Dixon	Gunderson
Bono	Doggett	Gutknecht
Boucher	Doolittle	Hall (OH)
Brewster	Dornan	Hall (TX)
Browder	Doyle	Hamilton
Brownback	Dreier	Hancock
Bryant (TN)	Duncan	Hansen
Bunn	Dunn	Harman
Burr	Edwards	Hastert
Burton	Ehlers	Hastings (WA)
Buyer	Ehrlich	Hayes
Callahan	Emerson	Hayworth
Calvert	Engel	Heineman
Camp	English	Hergert
Canady	Ensign	Hilleary
Cardin	Eshoo	Hobson
Castle	Everett	Hoekstra
Chabot	Ewing	Hoke
Chambliss	Fawell	Holden
Chapman	Fields (TX)	Horn
Chenoweth	Flanagan	Hostettler

Houghton	Menendez	Shays
Hoyer	Metcalfe	Shuster
Hunter	Meyers	Sisisky
Hutchinson	Mica	Skaggs
Hyde	Miller (FL)	Skeen
Inglis	Minge	Smith (MI)
Istook	Molinari	Smith (NJ)
Jackson-Lee	Mollohan	Smith (TX)
Johnson (CT)	Montgomery	Smith (WA)
Johnson, Sam	Moorhead	Solomon
Jones	Moran	Souder
Kaptur	Morella	Spence
Kasich	Myers	Spratt
Kelly	Myrick	Stearns
Kennedy (MA)	Nadler	Stenholm
Kennedy (RI)	Neal	Stockman
Kennelly	Nethercutt	Stump
Kim	Neumann	Stupak
King	Ney	Talent
Kingston	Norwood	Tanner
Kleczka	Nussle	Tate
Klink	Obey	Tauzin
Klug	Olver	Taylor (MS)
Knollenberg	Ortiz	Taylor (NC)
Kolbe	Orton	Tejeda
LaFalce	Oxley	Thomas
LaHood	Packard	Thornberry
Lantos	Pallone	Thurman
Largent	Parker	Tiahrt
Latham	Paxon	Torkildsen
LaTourette	Payne (VA)	Torres
Laughlin	Peterson (FL)	Torricelli
Lazio	Peterson (MN)	Trafigant
Leach	Pombo	Upton
Levin	Pomeroy	Vento
Lewis (CA)	Porter	Volkmer
Lewis (KY)	Pryce	Vucanovich
Lightfoot	Quillen	Waldholtz
Lincoln	Quinn	Walker
Linder	Rahall	Walsh
Livingston	Ramstad	Wamp
LoBiondo	Reed	Ward
Lofgren	Regula	Watts (OK)
Longley	Riggs	Waxman
Lucas	Roberts	Weldon (FL)
Luther	Roemer	Weldon (PA)
Manzullo	Rohrabacher	Weller
Martinez	Ros-Lehtinen	White
Martini	Royce	Whitfield
Mascara	Salmon	Wicker
McCarthy	Sanford	Wilson
McCollum	Sawyer	Wolf
McCreery	Saxton	Woolsey
McHale	Scarborough	Wyden
McHugh	Schroeder	Young (AK)
McInnis	Schumer	Young (FL)
McKeon	Seastrand	Zeliff
McNulty	Sensenbrenner	Zimmer
Meehan	Shaw	

NOES—89

Abercrombie	Gutierrez	Reynolds
Ackerman	Hastings (FL)	Richardson
Allard	Hefley	Rivers
Andrews	Hilliard	Rose
Baessler	Hinchee	Roybal-Allard
Bonior	Jacobs	Rush
Borski	Jefferson	Sabo
Clay	Johnson (SD)	Sanders
Clyburn	Johnson, E. B.	Schaefer
Coleman	Kanjorski	Scott
Collins (IL)	Kildee	Serrano
Collins (MI)	Lewis (GA)	Shadegg
Conyers	Lipinski	Skelton
Costello	Lowe	Slaughter
Coyne	Manton	Stark
DeLauro	Markey	Stokes
Dellums	Matsui	Studds
Deutsch	McDermott	Thompson
Dingell	McKinney	Thornton
Durbin	Mineta	Towns
Evans	Mink	Tucker
Farr	Moakley	Velazquez
Fattah	Murtha	Visclosky
Fazio	Oberstar	Waters
Filner	Owens	Watt (NC)
Flake	Pastor	Williams
Foglietta	Payne (NJ)	Wise
Frost	Petri	Wynn
Gephardt	Pickett	Yates
Gonzalez	Poshard	

NOT VOTING—28

Barton	Bunning	Hefner
Becerra	Condit	Johnston
Brown (CA)	Dooley	Maloney
Brown (FL)	Fields (LA)	McDade
Brown (OH)	Ford	McIntosh
Bryant (TX)	Gillmor	Meek

Mfume	Radanovich	Roukema
Miller (CA)	Rangel	Schiff
Pelosi	Rogers	
Portman	Roth	

□ 1731

The Clerk announced the following pairs:

On this vote:

Mr. Radanovich for, with Ms. Brown of Florida against.

Mr. Schiff for, Mr. Rangel against.

Messrs. BAESLER, MATSUI, and SHADEGG changed their vote from “aye” to “no.”

Ms. ESHOO, Messrs. GILCHREST, VENTO, LEVIN, GEJDENSON, MARTINEZ, MOLLOHAN, ROEMER, FRANK of Massachusetts, MASCARA, RAHALL, BERMAN, WAXMAN, DIXON, BEILENSEN, OLVER, TANNER, MEEHAN, and TORRES changed their vote from “no” to “aye.”

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. PORTMAN. Mr. Chairman, because of a scheduling conflict, I was unable to arrive in time for the vote on the Goodlatte amendment. Had I been in attendance, I would have voted “yea” on rollcall vote No. 200.

PERSONAL EXPLANATION

Mr. MFUME. Mr. Chairman, I was, unfortunately, detained in my congressional district in Baltimore earlier today and thus forced to miss a record vote. Specifically, I was not present to record my vote on rollcall vote No. 200, the amendment offered by Mr. GOODLATTE of Virginia.

Had I been here I would have voted “nay.”

PERSONAL EXPLANATION

Mr. FIELDS of Louisiana. Mr. Chairman, I was delayed in my district today and was not able to make rollcall vote 200 because I was doing a briefing on school nutrition with school children and cafeteria workers.

Had I been present, I would have voted “no.”

□ 1730

The CHAIRMAN. Are there further amendments to the bill, H.R. 988?

Mr. BERMAN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to use my time, if I could, to ask a few questions of either the gentleman from California, the gentleman from Virginia, if I might.

As I understand the principle of this bill, initially, was to follow the English rule. It has been modified somewhat. As I understand it now, that if offers and counteroffers keep going on between the plaintiff and defendant, the time for legal fees to be assessed against the losing party starts conceivably as little as 10 days before the trial and covers the duration of that trial; is that correct?

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. The gentleman is correct.

Mr. BERMAN. But as I understand the English rule, the English rule does not apply to those civil cases brought by an indigent plaintiff, a plaintiff represented by the legal aid society in Great Britain. Is there any provision in this bill that keeps an indigent plaintiff or a plaintiff who could in no way have the assets to pay the fee of the defendant in a contingency case, let us say, for example, from being assessed the fees that might ultimately be assessed if the final settlement comes in, the final judgment comes in higher than or less than the defendant had offered?

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, in section 6, the Court cannot award attorney's fees or other costs and expenses if they find that doing so would be manifestly unjust.

Mr. BERMAN. Section 6. My bill only has five sections.

Mr. GOODLATTE. In section 2, I guess it would be subsection (e)(6).

Mr. BERMAN. Section 2, (e)(6).

Let me just read that, "if the court finds, pursuant to a petition filed under paragraph (5)," that is a petition to shift costs, as I understand it.

Mr. GOODLATTE. That is correct.

Mr. BERMAN. "With respect to a claim or claims, that the judgment, verdict or order finally obtained is not more favorable to the offeree with respect to the claim or claims than the last offer, the court shall order the offeree," that is, in most cases but not all cases, the plaintiff, "to pay the offeror's," that is the defendant in most cases, "costs and expenses, including attorney's fees, incurred with respect to the claim or claims from the date the last offer was made, unless the court finds that requiring that payment of such costs and expenses would be manifestly unjust."

Is that a fair reading of the words?

Mr. GOODLATTE. I think the gentleman read it correctly.

Mr. BERMAN. Is it the gentleman's contention that ability to pay is one of the criteria that the court should look to in determining whether shifting costs would make it manifestly unjust?

Mr. GOODLATTE. I would leave that entirely to the discretion of the court. I think that in some circumstances, it might be appropriate to award attorney's fees regardless of those circumstances. In others, I feel that it might not. It is not my intention to define that in that fashion.

Mr. BERMAN. Mr. Chairman, reclaiming my time, I yield to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, to begin with, if the defendant was indigent, it would be totally uncollectable anyway. So it would be of no value to anybody to get it. I would imagine the plaintiffs would be willing to go along with, unless, unless it happened to be an insurance company that was behind it.

Mr. BERMAN. Reclaiming my time, let us say the defendant had a car. Let us say the defendant made—the plaintiff, talking about here—the plaintiff made \$20,000.

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, it could be the defendant.

Mr. BERMAN. Let us talk about it in the context of a plaintiff who has a legitimate case. It is not frivolous. He decides not to accept the offer. He could have his, by virtue of this fee shifting provision, he could have his wages garnished, his automobile attached, other assets foreclosed on because he was not in the, he was not able to pay the court-ordered shifted fee costs of the defendant who could be a multimillion dollar corporation. Is that not a fair statement of possibilities?

Mr. MOORHEAD. I do not think it is, because he would already have obviously at that point, have a huge judgment against him to begin with.

The CHAIRMAN. The time of the gentleman from California [Mr. BERMAN] has expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 5 additional minutes.)

Mr. MOORHEAD. Mr. Chairman, if the gentleman will continue to yield, if he were indigent, as the gentleman said, and the plaintiff got a huge judgment against him, or if it was the other way around, the plaintiff were indigent, as the gentleman says, the judge, I am sure, would consider the terms here that it would be totally unfair to tie those fees to it.

Mr. BERMAN. Let us create a hypothetical here. Let us understand what we are talking about.

A suit is brought in Federal court under the diversity statute by a plaintiff who is making \$20,000 a year, based on the negligence of an out-of-state corporation and offers go back and forth. He decides the last offer is not acceptable. They go to a month-long trial. And the jury awards an amount to the plaintiff that is less than the defendant's last offer.

In that situation, it is possible, under this statute, for the court to decide that the cost of that entire month-long trial and all the other costs of the 10 days prior to that trial would be shifted to the plaintiff and that that would be an enforceable judgment, that the defendant could then go and seek to execute through garnishment of wages, through attaching the car and executing on it, through doing all of the traditional devices that can be utilized to collect a sum owed. Is that not a fair statement?

Mr. GOODLATTE. Mr. Chairman, if the gentleman will continue to yield, that is possible just as it is possible for a poor defendant in a case to suffer those same consequences under the American rule, the current law that exists right now. We are equalizing the risk.

Mr. BERMAN. Well, if I may reclaim my time, that is not correct. There are only a few specified statutes, for instance, civil rights cases, where you automatically provide prevailing costs for the plaintiff.

Mr. GOODLATTE. What I am saying is, if a defendant is brought into court in a nonmeritorious, frivolous or fraudulent lawsuit and has to defend that case, unless there are provisions that provide attorney's fees and that defendant, win or lose, that defendant has to bear the cost. So what I am saying is that the plaintiff right now, if they are on a contingent fee basis, has no risk. You look in the phone book. You will see all the people that will tell them there is no risk in the case. The defendant always has risk.

Mr. BERMAN. I would like to reclaim my time to make a few points.

The proponents of this bill, if you keep talking about it as a way to deal with the frivolous, nonmeritorious case or in a way that would protect, because of this subsection 6, the indigent or almost indigent plaintiff, then all I would ask you to do is amend your bill to put those tests in. Do not say, this will only apply to deter the frivolous case and provide fee shifting in the nonmeritorious case when your bill makes no effort to limit it to that.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Texas.

Mr. DOGGETT. If I understood that last answer, about frivolous or fraudulent suits, you would get the impression that this only applies to frivolous or fraudulent suits. Is it not correct that there is no requirement to prove frivolity or to prove fraud in order to impose these burdens and lead to the garnishment of somebody's wages.

Mr. BERMAN. The gentleman from Texas is absolutely right. Ironically, in the one hearing we had in front of the subcommittee that is chaired by my friend from California, the witness, the law professor testifying in favor of the concept of loser pays, said there should be guidelines to limit this to the frivolous and nonmeritorious cases. This is what the proponent said, not the opposition.

Mr. DOGGETT. So they could have limited this bill to frivolous and fraudulent cases but instead, as a way of discouraging even legitimate suits that sometimes, of course, in a court in front of a judge and a jury could go either way, if someone takes a chance thinking they have got a good suit but they lose, it is not a frivolous suit, it is not a fraudulent suit, but when the jury weighs the evidence, they conclude that it does not have merit, that they are going to have imposed upon them the cost of some large concern in defending that suit and they could actually have the wages garnished, perhaps a car taken away, all kinds of things.

Mr. BERMAN. It gets even more complicated and in a sense unfair than

that. The gentleman could have a meritorious case where he wins a jury award.

The CHAIRMAN. The time of the gentleman from California [Mr. BERMAN] has again expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 5 additional minutes.)

Mr. BERMAN. Let me respond to the gentleman. Just in response to the gentleman from Texas, he could win, he could have a meritorious case but perhaps against that particular defendant the award was somewhat less than the very final offer.

□ 1745

This would bring into play the fee shifting without regard to how meritorious it was, or without regard to the ability of the plaintiff to pay. The thing that galls me is it keeps being argued, the proponents keep talking about the frivolous case, the nonmeritorious case, but they will not put into the bill limitations that would restrict this to the frivolous or nonmeritorious case.

This would be a very simple issue to deal with. You can set up a standard, you can set up a guideline in here that would give the judge the guidelines and the congressional intent to only have this apply in the case of frivolous actions, nonmeritorious actions, refusals to accept reasonable offers, but there is no effort to amend the bill to do that. That gives me the problem.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I want to commend the gentleman from California for bringing this point into even sharper focus than it has been brought before. However, just in case we think that there may be a bit of generosity in allowing the waiver of the requirement to pay fees and costs, in the report of the majority the Republicans say "It is the intent of the committee that this standard," which is to pay costs, "be interpreted to be an exceptionally high one, extending well beyond the relative wealth of the parties."

In other words, do not give them an inch, boys. We are going to turn this rule on its head, and it does not matter if one is wealthy and one is poor; we were looking for a lot of other things to help you keep this standard exceptionally high. I think it is an indication of intent.

Mr. BERMAN. The gentleman's point is so well taken. Remember, this was all patterned after an English rule, an English rule which, by the way, the bastion of British conservatism, the Economist Magazine, has said led to many unfair results, but that English rule exempts anyone who is represented by the Legal Aid Society, anyone who needs assistance with legal services.

Mr. DOGGETT. This is more a draconian rule.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, when the gentleman from Texas questioned the gentleman about the situation where the jury finds no merit in the claim, is it not the case that the jury there found no merit in the case, which begs the question? That is what we are saying. The only test of whether it is a nonmeritorious claim, that is, frivolous, is when the jury brings in a verdict of zero for the plaintiff. Then, at that point, is triggered the loser pays situation.

Mr. BERMAN. If I may reclaim my time, the gentleman from Pennsylvania does not understand the new basic structure.

Mr. GEKAS. The gentleman does not have to tell me what I understand. I understand.

Mr. BERMAN. The gentleman from Pennsylvania does not understand the basic framework of this bill. This is not limited to whether you lose the case. This bill, as it is now written, deals with you sue perhaps a number of defendants under diversity jurisdiction. As to one defendant who makes an offer, you come in let us say \$50,000 less than that offer, but with hundreds of thousands of dollars of jury award as to you, because we have eliminated joint and several liability now under this bill.

Mr. GEKAS. Mr. Chairman, if the gentleman will continue to yield, the question the gentleman from Texas posed is different. That is what I am saying.

Mr. BERMAN. If the gentleman will allow me to use my time, it has nothing to do with winning or losing. If the jury award comes in \$1,000 under what that particular defendant offered, then fees are shifted, unless the court somehow, under guidelines which are incredibly onerous and draconian, finds that it was manifestly unjust to shift the fees.

Mr. DOGGETT. If the gentleman will continue to yield, does the gentleman mean that instead of being a loser pay rule, this is really a winner pay rule? Somebody could go in, they could win, the jury could decide they were perfectly justified with reference to their claim, and they would still end up having this draconian rules applied to them?

Mr. BERMAN. Actually what I think, to reclaim my time, what I think is this bill is a warning to plaintiffs throughout the United States: Do not bring your case under the diversity statute, because the risks of any award against you are so great for the shifting of attorney's fees, whether you win or whether you lose, that you have lost.

The CHAIRMAN. The time of the gentleman from California [Mr. BERMAN] has expired.

(By unanimous consent, Mr. BERMAN was allowed to proceed for 2 additional minutes.)

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I yield to the gentleman from Texas.

Mr. DOGGETT. A further question, Mr. Chairman. The gentleman mentioned diversity jurisdiction. Does this also apply with reference to removal? In other words, if someone filed their action under State law in a State court that did not have a draconian, regressive, reactionary rule like that that is being urged tonight for adoption, could they be removed, if they were against an out-of-State party, to Federal court and suddenly find themselves as a winner pay, facing all of the hardships that you have suggested will emanate from this piece of legislation?

Mr. BERMAN. To reclaim my time, the gentleman shows that, even as a State justice, he is quite familiar with Federal law. I actually was too generous in my comment. We not only have limited the diversity jurisdiction for plaintiffs by this provision, and wiped it out, but what we have done is said "Defendants, you have the choice. You can stay in State court or you can take advantage of this draconian rule and remove to Federal court." This is such an unjust consequence.

Mr. GOODLATTE. Will the gentleman yield on that point, Mr. Chairman?

Mr. BERMAN. I am happy to yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

If the gentleman from Texas would also call attention to this, what the gentleman from Texas just described as the so-called winner pays rule is exactly what is included under Federal law right now, because rule 68 of the Federal Rules of Civil Procedure allows a defendant in a case to make an offer of judgment which, if the plaintiff does not accept it and goes into court and receives a judgment, a verdict in his favor for an amount that is less than that offer in judgment, the plaintiff can be required by the court to pay the attorney's fees of the defendant, just like this in this case.

Mr. BERMAN. Reclaiming my time, that is not correct. The only thing you can recover are court costs. That is a small, small percentage of the potential liability that comes when you add attorney's fees.

Mr. GOODLATTE. The cost can be very substantial in some cases.

Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in response to the colloquy that just took place on the other side, let me point out that this is a case of any kind of nonmeritorious claim being exposed to a risk for attorney's fees for the plaintiff or the defendant, so a plaintiff who is viewing their case as having merit is not going

to give up their Federal diversity jurisdiction. They are going to take that diversity jurisdiction, with the intent to force the other side to pay attorney's fees, unless they reasonably offer settlement offers. That is what this mechanism does.

With regard to the contention that this changes the English rule, and the gentleman from California [Mr. BERMAN] is somehow abhorrent of that, I would point out that the gentleman from California voted for this change in the Committee on the Judiciary. Therefore if he really does not like that, I think he has contradicted himself.

The fact of the matter is that this is simply modeled after rule 68, but it expands it. It makes it better, not worse, because under rule 68, only a defendant who is liable can avail themselves of the mechanism of the so-called winner pays described by the gentleman from Texas.

Under this plan, a defendant who is not liable, who says "I didn't do anything wrong, I should not have been dragged into court," they also can avail themselves of those privileges, and the plaintiff can avail themselves of that by making reasonable settlement offers.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, does the gentleman not agree there is a great difference between costs and court costs plus attorney's fees? It could be hundreds of thousands of dollars. To call one winner pays when it does not include attorney's fees is not quite the same.

Mr. GOODLATTE. Reclaiming my time, Mr. Chairman, the principle is the same, and the amount of those court costs can vary dramatically from case to case, as can the amount of the attorney's fees, but the same principle applies either way, and the fact of the matter is that the rule 68 is in the Federal Rules of Civil Procedure to encourage settlement of cases, and this will take that one step further, make that process not only available to defendants, but also available to plaintiffs and also available to defendants who are not liable.

This is only available to the defendant who is at fault. Why not also make it available to the defendant who is not at fault, and says "I have been dragged into court, I had no choice in this matter, I won the lawsuit, and now I have to pay substantial attorney's fees," whereas the plaintiff in a particular case may have taken no economic risk in proceeding to court, and their case is very different than that of the defendant, who always has to pay, win or lose.

Mrs. SCHROEDER. If the gentleman will yield again, I think we just have to keep reminding people, there is a tremendous difference between court costs and attorney's costs. When you are

adding the two together, the magnitude is great.

Mr. GOODLATTE. We have limited those attorney's fees so they can not exceed the amount the plaintiff is paying, or the defendant, if the defendant is the loser, cannot exceed the amount you are paying your own lawyer, so you cannot have a deep pocket come in and overload the costs by bringing in four lawyers to try the case.

Also, we have limited it to just 10 days before trial through the trial, so a party cannot overload the other party with discovery, whether it is necessary or unnecessary, and then collect attorney's fees for all that discovery that was done.

This is a very reasonable way to impose some risk on the parties in cases, to encourage settlement and reduce the number of frivolous, fraudulent, and I would say to the gentleman from California [Mr. BERMAN], nonmeritorious cases.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield again?

Mr. GOODLATTE. I yield to the gentleman from Colorado.

Mrs. SCHROEDER. Earlier the gentleman from Pennsylvania [Mr. GEKAS] said, I think the way I heard him, and I hope we get a clarification, but he defined as frivolous a case that the plaintiff lost; that if the plaintiff lost, by definition, it would be frivolous.

Mr. GOODLATTE. I do not believe that is the gentleman's definition.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Pennsylvania for a clarification.

Mr. GEKAS. Mr. Chairman, what we are saying is that the final verdict of the jury is, in effect, if it finds against the plaintiff, if it finds zero, that is prima facie evidence for the late determination as to whether or not attorney's fees and so forth should be paid, that it was nonmeritorious. It had no merit or else it would not have resulted in a zero judgment.

Mrs. SCHROEDER. Mr. Chairman, if the gentleman will continue to yield, does the gentleman mean nonmeritorious meaning frivolous? Because he is saying anyone who loses therefore was frivolous.

My concern is what do you do about the very close calls. That is why I was so disturbed by the gentleman's comment.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding. I just wanted to join in the correction of my friend, the gentleman from Pennsylvania, because a zero recovery from the plaintiff raises no question whatsoever about frivolity, because the test is of the evidence, which you could lose by a very small amount. It has nothing to do with frivolity.

Mr. GEKAS. So what?

AMENDMENT OFFERED BY MR. MCHALE

Mr. MCHALE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MCHALE: After section 4, insert the following:

**SEC. 5. FRIVOLOUS ACTIONS.**

(a) GENERAL RULE.—

(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

- (i) groundless and brought in bad faith;
- (ii) groundless and brought for the purpose of harassment; or
- (iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term "groundless" means—

- (i) no basis in fact; or
- (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

- (1) the multiplicity of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the party to investigate and conduct discovery; and
- (4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

- (1) the striking of the complaint;
- (2) the dismissal of the party; and
- (3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in a complaint does not constitute a frivolous action.

Page 7, line 1, strike "SEC. 5." and insert "SEC. 6.".

Page 7, line 7, strike "The" and insert "Section 5 and the".

Mr. MCHALE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. MCHALE. Mr. Chairman, I first of all want to thank the leadership on both sides of the aisle for their cooperation in allowing me to bring this amendment to the floor. I particularly want to thank my colleague, the gentleman from California [Mr. BERMAN] who spoke a few minutes ago, and who inadvertently described exactly the contents of my amendment.

The gentleman from California, when he was at the microphone, said we should have an amendment that is strictly limited to frivolous lawsuits, we should have an amendment that is based on clear standards, we should have an amendment where the determination is made by the judge in the case as to whether or not there is a frivolous suit, whether or not those standards have been met, and whether or not appropriate sanctions should be imposed.

Mr. Chairman, that is precisely what is contained in my amendment. Let me summarize briefly the contents of what I propose. First of all, the amendment now at the desk supplements but does not replace the language contained in the Goodlatte settlement amendment.

The language of my colleague, the gentleman from Virginia [Mr. GOODLATTE], inserted in the bill remains intact.

Second, my amendment covers statutory as well as diversity cases. Third, it directly addresses the issue of frivolous suits, as requested by my colleague, the gentleman from California [Mr. BERMAN]. It allows for the early dismissal potentially within the first 90 days of a case of those privileges claims which have been brought before the court. This allows for dismissal before extensive discovery costs and legal fees have been incurred.

My amendment is fully compatible with the analogous language in H.R. 956, the products liability bill that we will take up later this week. In summary, Mr. Chairman, what my amendment requires is this: After a judicial finding that the suit is indeed frivolous, this amendment requires that the court enter an order compelling the losing plaintiff or his attorney to pay those expenses unnecessarily incurred by the winning defendant, including court costs, attorney's fees, and discovery expenses.

Mr. Chairman, as someone who opposes the English rule, and ironically, this proposal was originally drafted in opposition to the English rule, a matter no longer before us, and who is concerned that the settlement procedures

in the bill itself may be somewhat complicated, I offer this amendment as a clear and straightforward solution to the real, if rare, problems of frivolous suits.

Mr. Chairman, it was ironic, as I sat here a few moments ago I listened to the gentleman from California [Mr. BERMAN] raise very legitimate concerns. What he said into this very microphone was that we need to limit the applicability of sanctions to truly frivolous suits, those motions need to be based on clear standards, and we should allow the judge under those circumstances to make a determination.

I turned to Mr. BERMAN a moment ago and said "I have the amendment and I now offer it to the House."

□ 1800

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. MCHALE. I yield to the gentleman from Colorado.

Mrs. SCHROEDER. I thank the gentleman from Pennsylvania for yielding.

Let me ask a few questions about your amendment, because I really think this amendment goes much further than the bill, if I am reading it correctly. The way I read the sanctions section on page 2 is that you oppose the sanction on the verifier of the complaint and the attorney of record, and it says "shall." So my understanding is you are putting them both in the loop for a frivolous lawsuit; is that correct?

Mr. MCHALE. The gentlewoman is correct, and I think that is entirely fair and appropriate. Remember, the sanction is not to be imposed unless the judge has previously determined that this is truly a frivolous suit. This then empowers the judge to enter an appropriate sanction order where, if necessary, costs can be imposed, where appropriate, on both the litigant and the litigant's attorney.

When a frivolous case has been filed and has been knowingly filed by an attorney, I believe that is a relatively rare circumstance, but when that happens, I do trust to the trial judge to enter an appropriate order of sanctions potentially on the party and the party's attorney.

Mrs. SCHROEDER. If the gentleman will yield further, I must say I am a little concerned about this amendment because it does that, because it is bringing in a whole other level. When we look at the core bill that this amendment is being offered to, we are not saying if the loser cannot pay, the loser's attorney must pay, or the loser and the loser's attorney must both pay. So you are adding another whole standard. Furthermore, what about frivolous defenses?

Mr. MCHALE. Reclaiming my time, that is current law. Under current law when an attorney acts improperly under Federal rule 11 or when a truly frivolous claim has been filed, a judge, usually at a much later stage in the proceedings, may enter an appropriate sanction order.

All we are saying here is that when a truly frivolous suit has been filed, and we define that very carefully in the amendment, under circumstances where I think we would have consensus—

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. MCHALE] has expired.

(By unanimous consent, Mr. MCHALE was allowed to proceed for 2 additional minutes.)

Mr. MCHALE. Mr. Chairman, where we have the matter brought before a judge and the judge who is hearing the case concludes that the matter is truly frivolous, it seems to me that under that circumstance, it is entirely correct and appropriate that the judge in the case be allowed to sanction both the party and the party's attorney, the purpose being to deter frivolous actions.

Mrs. SCHROEDER. If the gentleman would yield further, your amendment is not in lieu of the Goodlatte language.

Mr. MCHALE. It is not.

Mrs. SCHROEDER. So the issue that was going around that the gentleman from California [Mr. BERMAN] was talking about, about frivolous lawsuits, this is on top of the Goodlatte amendment, is that correct?

Mr. MCHALE. This is in addition to it. Frankly, and I mean to be absolutely candid here, I do have some concerns about the unpredictability of the settlement procedures now in the bill, but I do not touch those procedures. My amendment offers a much earlier, much more expedited and efficient means by which we can screen from the judicial system those truly egregious cases where within the first 90 days the judge can conclude that the case is totally without merit, that it has been brought frivolously and that a sanction order is appropriate both for the party and the party's attorney who should never have dragged the defendant into court.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. MCHALE. I yield to the gentleman from California.

Mr. BERMAN. I think the gentlewoman from Colorado makes a good point. My initial excitement and positive interest in your amendment—

Mr. MCHALE. Do not lose it now.

Mr. BERMAN. Is waning because it does not replace section 2, it is in addition to section 2. So all of the problems of meritorious cases brought by relative poor plaintiffs in situations where maybe they even win—

Mr. MCHALE. Reclaiming my time if I may, that determination of what is frivolous is based on the standard in the amendment where the judge has to conclude before sanctioning anyone that the case was brought in bad faith, for purposes of harassment or for other improper purposes. And when that is the prior judicial determination, sanctions would seem to be appropriate.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have been listening carefully to the gentleman from Pennsylvania's proposed amendment. What he is doing is creating an entire new rule out of whole cloth without ever going to the Rules Enabling Act, the procedure through which we devise new rules.

He is saying that after complaint is filed, the defendant has 30 days to answer, there is discovery proceedings, and before a summary judgment, there would be this frivolous motion that would be permitted to be entertained.

This moves right out of nowhere and has the Congress intrude upon a 50-year procedure that has been working relatively well.

I would urge great caution in the Congress now moving directly to the rules-making capacity as opposed to going through a system that has been carefully provided over the years in terms of how these rules come into being.

This is a motion that would come to pass before there has been an examination of the facts. The summary judgment would occur after a frivolous motion which would make no sense at all in a procedural way to move a Federal case along. It would be a travesty to have this motion weigh in before there have been the facts brought before the court to even issue a summary judgment.

I would hope that the gentleman would carefully consider what he has in mind in that regard.

Mrs. SCHROEDER. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I am very concerned about this, because I think we are creating a whole new motion here, and I think when you create new motions in the court, you are causing all sorts of problems.

I must also say to Members, the DSG reports this amendment as being in lieu of, and so what I understand from the gentleman from Pennsylvania is not in lieu of, it is alongside of. Therefore, the Democratic study group is wrong.

Mr. MCHALE. Mr. Chairman, will the gentleman yield on that point?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. The gentlewoman does accurately quote from the DSG report and for whatever reason, and it may emanate from my office, the DSG report is inaccurate. The language of my amendment is an alternative but not in replacement of the language offered by the gentleman from Virginia [Mr. GOODLATTE]. Mr. GOODLATTE's language would normally apply up to within 10 days of trial. My language which does not touch his would come into play at a much earlier stage in the process where the purpose really is to screen the most egregious cases before exten-

sive legal fees and discovery costs are incurred.

Mrs. SCHROEDER. Reclaiming my time, I must say I am very concerned about the amendment, then, because it leaves the core of the loser pay things which I am concerned about, then it adds this other whole motion to this process, and I think there are a lot of questions that bubble around in my head.

I realize you cannot make this motion until 90 days after it has been filed, but what if discovery is not done? Can you keep filing this motion?

Then also I think it is also one way. The defendants do not have a way to fight back if the plaintiffs start throwing out frivolous countercomplaints, or whatever, that they could possibly be doing or frivolous defenses that are raised.

So I think you are giving the hammer to only one side, you are throwing attorneys into it. I do not know how many times you could be making this motion after the 90 days, and I can also see attorneys saying if you have made the motion in the first 90 days and the judge did not rule it was frivolous, then they might say you could not apply loser pays later on. I just think there are a whole lot of real confusing things here that I do not understand.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I would first like to thank you for pointing out that the DSG report inaccurately reported this. Second, I would like to raise a question. Why would the effect which the gentleman from Pennsylvania [Mr. MCHALE] is after not be obtained today with simply filing a motion to dismiss and asking for rule 11 sanctions?

Mr. MCHALE. Mr. Chairman, will the gentleman yield?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. It is entirely possible by cobbling together the existing rules of civil procedure, you could end up with a kind of process that we spell out explicitly in the contents of my amendment.

This amendment simply says that if a truly frivolous case comes through the courthouse door and if it is recognized as such by the judge, then upon the dismissal of the case at that early stage within the first 90 days, sanctions may be imposed.

The gentleman from Texas [Mr. BRYANT] is correct. If a judge wanted to reach into the rules of civil procedure and cobble together several different rules, the same result could be achieved. This is a much more straightforward process.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I would just like to make a point. I would strongly oppose the gentleman's amendment

now that I learn that it is in addition to rather than in place of, for the simple reason that as you have constructed it now, first the plaintiff who has no resources and is obviously frightened by the situation in the beginning files a lawsuit, then they first have got to get past the potential of having a judge force them to pay attorneys fees based upon your provision, and if they get past that, then they are faced with at the end of the case having to pay attorneys fees based upon what the Republicans have come up with.

It is doubly bad, rather than an improvement, and I would strongly urge Members to vote against this amendment.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. I would just like to refer our friend from Pennsylvania to the Federal Rules of Civil Procedure, rule 11-1, by motion, a motion for sanctions under this rule can be made separately from other motions.

The remedy that the gentleman seeks is already well ensconced in the rules.

Mrs. SCHROEDER. I think that the gentleman from Michigan is making an excellent point. We have rule 11, we are not sure what we are devising here with a whole new motion and what is going on around it, and I understand what the gentleman is trying to do, I think there are very good intentions, but they are missing the core of what everybody was complaining about.

Mr. MCHALE. Mr. Chairman, will the gentleman yield?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. I thank the gentlewoman for yielding. If what we are talking about here is a redundant situation, and I do not think it is, why is there such vehement opposition?

What we are talking about here is a situation where there are no clear procedures for the removal, the dismissal and the imposition of sanctions where a case is truly frivolous.

Please, let's start with the premise of this argument. The judge must conclude that there is bad faith, that this is brought for purposes of harassment, and only thereafter may sanctions be considered.

The CHAIRMAN. The time of the gentleman from Colorado [Mrs. SCHROEDER] has expired.

(By unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. Let me just answer what the gentleman said. Reclaiming my time, I think it is very important to point out that it sounds so simple, but we are creating a whole new motion. There is rule 11, there is a process that is already there. We are adding something all new and that is also holding the attorney accountable, and there is a lot of discretion in there

as to what a judge might hold frivolous, and we do not know how many times this motion can be made after 90 days. It could become a harassment motion. Plus you do not have anything on the plaintiff's side that is equal. So you just keep giving more and more hammers to one side and I do not think it levels the playing field at all.

Mr. Chairman, I would urge Members to please vote against this amendment, because I really think the way it is written now, it is going to just cause more problems.

(At the request of Mr. CONYERS and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. It just occurred to me as the gentleman asked what is the sweat if it is just redundant. We cannot make the rules for Federal court procedure in the United States redundant when we are now going outside of the Rules Enabling Act which has a process set up for making rules.

The gentleman rushes to the floor with an idea that the DSG report got wrong, we are trying to help straighten it out, we point out to him that there is adequate coverage of this, but think of the problem with frivolous lawsuits. Frequently they are not discovered in the first weeks or months of the suit. It sometimes is determined in the course of the case as witnesses and evidence are produced that this is not a well-founded lawsuit. So having this motion intervene before summary judgment within 90 days is yet another reason for us to, as unexcitedly as we can, point out we do not need this amendment.

(At the request of Mr. MCHALE and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 2 additional minutes.)

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. I thank the gentleman for yielding, and I apologize, I would not have requested the time had I known that.

I thank my colleagues for their contributions to the debate, but let us not allow a smokescreen to be raised here. This matter is very straightforward. The fact is when the suit cannot be shown to be frivolous in the first 90 days, the motion will not be granted. Where this motion will be granted and should be granted is when it can be established within the first 90 days that the case has been brought for purposes of harassment or bad faith.

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When it can be shown in the first 90 days that it is truly frivolous because of bad faith or harassment, why do we want to incur the expenses of discovery? Why not allow the trial court to dismiss the case and impose appropriate sanctions?

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mrs. SCHROEDER. I yield to the gentleman from Michigan.

Mr. CONYERS. For us to suggest we do not have a remedy for frivolity that is discovered within the first 90 days is to misread seriously the Federal Rules of Civil Procedure. We have such a rule. What I am saying to the gentleman is we do not need to worry about the first 90 days because most frivolously brought suits are discovered later than that. It is very hard to determine whether it would emerge.

Mr. MCHALE. Mr. Chairman, will the gentleman yield on that very point?

Mr. CONYERS. What the gentleman is doing is ignoring that we have a way for modifications to be worked out between the court and the Congress. It is called the Rules Enabling Act, and this is a very extraordinary provision that the gentleman is making. Very few Members get on the floor and move to directly amend the Federal Rules of Civil Procedure without so much as a hearing, discussion, witnesses or anything, explain to us DSG did not get it right, and we keep trying to point out to the gentleman that this problem that he is addressing is already covered.

Mr. MCHALE. Mr. Chairman, will the gentleman yield?

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

The CHAIRMAN. The time of the gentleman from Colorado [Mrs. SCHROEDER] has expired.

(At the request of Mr. MCHALE and by unanimous consent, Mrs. SCHROEDER was allowed to proceed for 1 additional minute.)

Mrs. SCHROEDER. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. Mr. Chairman, this debate has taken a turn I did not anticipate and without in any way challenging the sincerity of the arguments, we have heard every smokescreen in the world within the last few minutes.

This amendment simply says in conformity with the existing bill where you have a bad suit, one that is clearly frivolous and brought in bad faith, we are empowering with this procedure a Federal judge to recognize that the suit is frivolous and impose appropriate sanctions. That is a power that could conceivably be cobbled together under existing law but it is nowhere spelled out nearly as clearly or appropriately as it is in this amendment.

Why are we so frightened that frivolous suits will be dismissed from court in an expeditious manner and appropriate court costs flowing from bad faith be imposed on litigants and lawyers who in that rare case file such frivolous suits?

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is extremely important that we focus on the fact that the McHale amendment is not an amendment to this bill that would make the bill deal with frivolous suits.

It is an amendment to the bill which adds another step in this process.

Were it an amendment which converted this bill into one that would screen out frivolous suits I would wholeheartedly support it and I think nearly all of us would. What it does is add to this draconian and unprecedented in 200 years notion of loser pays, a provision that says that little person who does not have very many resources and is not going to be able to get a lawyer to work for them to bring a case against a big person or institution, whether that be the government or a major company of some kind faces an additional hurdle, and that is that a local judge perhaps friendly and philosophically inclined in the way of a defendant might slap him with a dismissal under the McHale amendment and make him pay attorney's fees, but if he can get past that and then he has the outcome that is foreseen in the Republican bill, he then faces once again the possibility of having to pay attorney's fees, costs, and be flatly bankrupt for simply trying to pursue what might have been a meritorious case.

I would urge Members to look carefully at this. If we can take the McHale language and convert it into the main purpose of bill, that is to say we made the McHale language as it is the DSG report made us think he was going to do, I would vote for that. I understand there is going to be an amendment offered in just a moment to do that, and I urge Members to move strongly in the direction of converting the McHale amendment into that and do not support the McHale amendment as a simple addition of another dangerous step for a middle-class person who has a meritorious case and cannot get a lawyer to handle it for the fear he may be hit not once but perhaps even twice.

AMENDMENT OFFERED BY MR. BERMAN TO THE AMENDMENT OFFERED BY MR. MCHALE

Mr. BERMAN. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. BERMAN to the amendment offered by Mr. MCHALE: Strike section 2 and insert the following:

**SEC. 2. FRIVOLOUS ACTIONS.**

(a) GENERAL RULE.—  
(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

- (i) groundless and brought in bad faith;
- (ii) groundless and brought for the purpose of harassment; or
- (iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term "groundless" means—

- (i) no basis in fact; or
- (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

- (1) the multiplicity of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the party to investigate and conduct discovery; and
- (4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

- (1) the striking of the complaint;
- (2) the dismissal of the party; and
- (3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in a complaint does not constitute a frivolous action.

Page 7, line 7, strike "The amendment made by section" and insert "Section".

Mr. BERMAN (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. MOORHEAD. Mr. Chairman, reserving the right to object, we do not have a copy of the amendment yet.

Mr. BERMAN. Mr. Chairman, will the gentleman yield on his reservation?

Mr. MOORHEAD. I yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, all this amendment does is take the amendment offered by the gentleman from Pennsylvania and replace section 2 with his amendment. In other words, makes his amendment into the base, the core of the bill. In other words, going from the offer, the counteroffer, loser pays notion to the frivolous action notion.

Mr. MOORHEAD. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BERMAN. Mr. Chairman, the debate which preceded the introduction of the amendment by the gentleman from Pennsylvania [Mr. MCHALE] discussed the unwillingness of the proponents to have their language meet their rhetoric, to deal with the non-meritorious frivolous claims.

The gentleman from Pennsylvania [Mr. MCHALE] has come up with an amendment which seeks to do that. While I have some concerns about the entire structure of the amendment and to what extent it moves in place of the Federal Rules of Civil Procedure or might have other provisions which are inconsistent with rule XI, the fact is the amendment of the gentleman from Pennsylvania [Mr. MCHALE] does deal with the rhetorical arguments in favor of the sponsors, that the sponsors of this bill have been using.

Therefore, I thought the appropriate thing to do in this case was offer an amendment which simply makes the McHale amendment to deal with actions in the case of frivolous lawsuits the core of this bill. Let us, if we want to address the issue of frivolous cases, an explosion of frivolous cases, the cases which have no merit and the ability of the court to deal with that effectively, let us not punish the poor plaintiff, let us not punish the plaintiff who has a decent case and believes in good faith that he or she can win that case. Let us not punish the plaintiff who receives a judgment that is \$1,000 less than the last offer happens to be against that particular defendant by making massive shifts of legal fees from the defendant to the plaintiff without regard to the plaintiff's ability to pay.

That is, let us take the McHale amendment and let us move that ahead as the core part of this bill.

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. BERMAN. I am happy to yield to the gentleman from California.

Mr. MOORHEAD. Mr. Chairman, does this strike Goodlatte? Does it strike section 2?

Mr. BERMAN. I will say to the gentleman, yes, it does.

Mr. MOORHEAD. So it strikes Goodlatte.

Mr. BERMAN. It substitutes the McHale language for the Goodlatte language; yes.

Mr. MOORHEAD. And does it attempt to restrict it only to the diversity cases.

Mr. BERMAN. This amendment, as I understand it, is not restricted to diversity cases; and what is the logic of restricting it to diversity cases if a case is frivolous?

Mr. MOORHEAD. I am trying to find out what it does.

Mr. BERMAN. It does not restrict to diversity cases. It is the exact terms, word for word, of the McHale amend-

ment, only in section 2 instead of as an addition to the what I view as very unfortunate loser pays concept that is in the base bill.

I urge an aye vote on this amendment.

Mr. MCHALE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I appreciate where the gentleman is coming from in his argument. As a matter of fact, the position he is now taking is one I had originally considered taking myself in the drafting of my amendment. I had originally considered it as a substitute for the Goodlatte language and then both logically and practically I decided against it. Let me tell Members why I changed my position with regard to the logic of the Berman substitute amendment.

The proposal of the gentleman from Virginia [Mr. GOODLATTE] has to do with settlement language, settlement negotiations that may occur at the end of the pipeline, up to within 10 days of the time of trial. He makes a good faith effort in his language to encourage settlement at that point in order to preclude unnecessary jury determinations, the costs, the expense and the delay of the actual trial.

My amendment logically moves to the opposite end of the pipeline, and frankly I would respectfully suggest it is the end of the pipeline where the American people are demanding reform. It says early on in the process, before discovery costs have been incurred, before legal fees have been run through the ceiling early on in the process when it is clear to the trial judge that there has been bad faith, that the suit is being brought for the purposes of harassment or some other improper purpose, within those first 90 days before judicial resources have been unnecessarily consumed, the case may be dismissed. It may be determined to have been brought frivolously, and sanctions can be imposed.

Now, whether or not Members support the Goodlatte language regarding settlement negotiations, perhaps 3 years into the litigation, my amendment clearly improves the bill by allowing a release of those cases from the judicial process when at the front end of litigations it is clear to the trial judge the suit is being frivolously brought for improper purposes.

Second, in the event that the Berman amendment were to carry, even if it were to be substituted for the Goodlatte language, that would in fact kill the bill. And I think that is perhaps the purpose of some who might argue for that position.

My amendment is a logical, reasonable alternative that cuts to the heart of this issue, the prompt, efficient dismissal of frivolous claims when that fact is clear during the first the 90 days of litigations. At a later point in time it may be determined, in this body or the other body, that the Goodlatte language should be amended or perhaps deleted. But at this point there is absolutely no inconsistency in arguing for

reform both at the beginning of the pipeline and at the end.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. MCHALE. I certainly will yield to the gentleman from California.

Mr. BERMAN. Mr. Chairman, the gentleman's amendment is focused on the frivolous, nonmeritorious case and trying to deal early on in the process to avoid massive expenses that come when a frivolous case is brought.

Mr. MCHALE. The gentleman is correct.

Mr. BERMAN. Mr. Chairman, it is the rhetoric and the arguments of the proponents of the basic bill, all fit into the context of frivolous actions, desire to deter frivolous actions. The gentleman's amendment strikes at that; their amendment does not. Let me give an example.

Mr. MCHALE. If the gentleman will yield, the gentleman's analysis is absolutely correct. I would therefore suggest to him that he vote for my amendment and if that does not sufficiently improve the bill, vote against the bill.

Mr. BERMAN. Mr. Chairman, I appreciate the gentleman's suggestion. If he will continue to yield, I think I can improve the bill by taking the gentleman's effort to address the issue of frivolous litigations, which I keep hearing from the sponsors of the bill and the proponents of the contract was the purpose of their amendment, and in the belief that the gentleman's amendment comes closer to achieving that goal than their amendment, without the negative impacts on the meritorious case brought by the plaintiff who might not have the resources to cover attorneys' fees, and who has every good intention in bringing that action, I think the gentleman's amendment meets the objectives much more clearly than the bill does with the present system, and so I want to see the gentleman's amendment become the basic heart of the bill.

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And that is the purpose, if I may just use your time to illustrate the problem, under the Goodlatte amendment, if you accept that the next bill coming down the pike, the product liability bill, eliminates joint and several liability, you get into a situation where a plaintiff brings a case against, say, three defendant corporations, and one of the defendant corporations he is suing, let us say, for \$1 million, and one of the defendant corporations says, "I will give you \$200,000."

Mr. MCHALE. Reclaiming my time, the gentleman and I may be in total agreement as to some of the potential deficiencies in the current language in the bill. My amendment is before the House subjected to your amendment as a substitute which deals totally with the other end of the pipeline. Whatever reservations the gentleman might have regarding the Goodlatte language, surely we can come together with a consensus opinion that a frivolous case

ought to be dismissed within the first 90 days.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the Berman amendment to the McHale amendment.

This would have the effect of eliminating all of the effort that has been made in putting into this case incentives for parties to settle the case, incentives the gentleman from California himself voted for in the committee on this bill.

And if we were to adopt this in the manner that the gentleman from California [Mr. BERMAN] suggests, that is all we will accomplish. We will go back to having a situation where we have rule 11 and only rule 11 with a mechanism added by the gentleman from Pennsylvania who is acting, I think, in very good faith to provide an additional mechanism to act within 90 days of a suit being brought, but you will still have the situation where it will always be in the hands of the judge to decide what a frivolous case is, what a nonmeritorious case is, what a fraudulent case is, and only in those cases will there be any recompense to the prevailing party.

The result of that will be the same that we have right now with rule 11 of the Federal rules of civil procedure. It is seldom imposed on any of the parties in the cases.

We are attempting here to say that when somebody brings an action in Federal court under the diversity law that they will understand that it is not a risk-free proposition. They should make sure that they have confidence in their case and understand that if they do not offer to settle the case in good faith that the case will result in their being forced to pay attorneys' fees to the party that was forced to defend the case, or in the case of a defendant who is defending the case in bad faith, they will be forced to pay attorneys' fees to the plaintiff who brought a good case that should have been settled before it ever got to trial.

If the gentleman from California is successful in his motion, we will not have any provisions in the bill which say that the loser of the lawsuit based upon the merits of the case and the loser not having any merits, because the jury found his claim to be nonmeritorious, or he did not negotiate reasonably in the case and, therefore, an award was granted below what the defendant last offered in the case and, therefore, the plaintiff should have taken that award, under those circumstances, we will not have any of those incentives for settling the case if this amendment were adopted.

Now, the gentleman from Pennsylvania has, I think, a good proposal to expedite bringing to the attention of the court frivolous cases, but he does not have any way of defining what a frivolous case is or defining what a nonmeritorious case is or defining

what a fraudulent case is, and the mechanism that we have in the bill now does define what a nonmeritorious or lesser, if you want to accept the gentleman's contention that there are cases that are not frivolous but are close calls, the jury finds them nonmeritorious, as the other gentleman from Texas described them earlier. Under those circumstances, there is a risk of paying attorneys' fees.

That will be gone if the amendment offered by the gentleman from California to the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE] is adopted.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I thank the gentleman for yielding.

I want to point out that you have acknowledged that we have a mechanism in place now to get rid of frivolous lawsuits.

Mr. GOODLATTE. Absolutely. I acknowledge it is there. I would hope the gentleman from Texas would acknowledge that it is used very, very seldom.

Mr. BRYANT of Texas. I would like to ask the gentleman to express his opinion about why it is used very, very seldom, if that is the case.

Mr. GOODLATTE. In my opinion it is used very, very seldom because judges are former attorneys and they say, "There but for the grace of God go I." They do not want to put an attorney under rule 11 sanctions in an embarrassing situation with their client.

The fact of the matter is there are far more frivolous and fraudulent cases. George McGovern says there are one out of four cases that are frivolous and fraudulent. Surely rule 11 does not apply in one out of four cases.

Mr. BRYANT of Texas. I am interested to hear the gentleman express his faith in George McGovern's judgment.

Mr. GOODLATTE. I was hoping you would place some faith in George McGovern's judgment.

Mr. BRYANT of Texas. Neither he or Kemp are high on my list, but I would say to the gentleman that the people in court are former lawyers, the judges are former lawyers. Yes, the judge is most likely a former defense lawyer. They are the ones that come here and say, "Oh, all of these frivolous lawsuits are being filed." Why do not these defense lawyer judges dismiss them under rule 11? Now, the point I am making is this, we have a mechanism for getting rid of frivolous cases.

The gentleman from Pennsylvania [Mr. MCHALE] proposed an amendment to make it more explicit. We thought that was going to be a substitute for your bill. If it was, it would be a good idea.

Vote for the Berman amendment and it will be.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is with some trepidation that I join the gentleman from California [Mr. BERMAN], and the reason that I join him now, even though I was not originally for McHale, is that it is what he is doing to the whole bill is what makes this important. We are finally debating what is, I think, at the center of the issue, what to do about frivolous, malicious, or fraudulent lawsuits, and this is the core of the issue, not whether the loser should pay through a wonderful gaming device that stacks it up against the leveraged defense.

This is a much more salutary way for us to proceed, and if there is any problem, it is not the good faith of the plaintiffs bringing suit which, under the current bill, will be intimidated through the gambling creed behind the current H.R. 988.

What I want to see is a little person able to bring a suit in good faith that may not have the ability to pay, who may not have the ability to even pay his lawyer's fees at the end of the case, win or lose.

Mr. MCHALE. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Pennsylvania.

Mr. MCHALE. In the interests of full disclosure, let me say to the gentleman and to the House, I used to be a plaintiff's lawyer. I represented many of those persons of modest financial resources.

The language in my amendment would not harm those persons in any way, and I have to smile and say to the gentleman that it is heartening to see that the wisdom of my amendment has now become apparent in light of the fact that it is being offered as a substitute for the earlier Republican language.

Mr. CONYERS. Exactly. That is the redeeming part of the whole thing, as far as I am concerned, but, you know, we are in a situation of relative improvement.

What we are trying to do now is a lot different from cutting out some of your clients in earlier years who would not have been able to bring a suit unless you were going to have contingent fees or you took the case, or someone took the case, on the basis that it had merit. You could not look in the crystal ball and predict you would win or lose the suit. You could not tell what the jury was going to do.

You did not know what the judge is going to do. You did not know if you were going to get shot into a different forum, all of which has a tremendous impact on the outcome of a case. And what we are doing now, what we are doing now is saying let us look at whether it is malicious, frivolous, or fraudulent, and with that, I can agree.

Mr. MCHALE. If the gentleman will yield further, the gentleman and I agree, which is why I oppose the English rule. Ironically, my proposal was drafted originally not as a substitute for Goodlatte but as a substitute for

the English rule on which he gentleman from Michigan and I are in full agreement.

Mr. CONYERS. The base underlying the bill is worse than that English rule, because at least the English rule let people who had lawyers appointed be free of being assessed costs. This rule does not take that into consideration.

I urge the Berman amendment be agreed to.

Mr. BRYANT of Texas. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to say very briefly if you vote for the Berman amendment what you will get is what the DSG reported the McHale amendment was to amend. We now learned it was inaccurate. The report was inaccurate. If the Berman amendment is adopted, we will be voting for a system that gets rid of frivolous lawsuits early in the case but not one that makes it so frightening for a middle-class or lower middle-class person to bring a lawsuit that they just flat cannot afford to come forward and bring one.

The point is we are told the problem that exists is frivolous lawsuits that cost defendants money unfairly, even though we cannot find any data to support this, we cannot get any studies brought forward that this is going on, we cannot get any kind of an economic study. We do not have any evidence of it at all. We are told the problem is frivolous cases.

We respond to that by saying there is rule 11 right now that gets rid of frivolous cases early in the case. The other side comes back and says, "Yes, but the judges do not use it enough."

Well, the fact of the matter is what they are most really deeply concerned about is they do not want middle-class and lower middle-class people to be able to file a lawsuit against defendants with whom they sympathize. That is simply what it boils down to.

Now, the Berman amendment, if adopted, will mean we will have the first 90 days of the case in the system for getting rid of what they say they are concerned about, frivolous lawsuits, but we would not have a system that said that an average person who brought a case and happened to lose, and everybody knows you can lose a case serendipitously from time to time, would not lose all of their life's savings, lose all of their personal assets and, therefore, be afraid to bring the case in the first place.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from California.

Mr. BERMAN. It is not simply the losing of the case. You can lose by winning under the Goodlatte scenario. That is why I prefer the McHale approach instead of the Goodlatte scenario, and let me explain why.

A situation, a diversity case, four or five corporate defendants, a plaintiff brings an action, he seeks, based on

medical injuries and loss of wages and pain and suffering, to collect a million dollars. Defendant three of the five defendants offers \$80,000. He has no other offers. He thinks \$80,000 will not even cover reimbursement for one-third of his medical bills. He refuses that offer. The case goes to trial. He gets a judgment; he gets a judgment for \$1 million, exactly what he sought in his initial pleadings.

However, under the elimination of joint liability, that is coming in the very next bill, the judge apportions, and the jury apportions, liability where the one defendant who made an \$80,000 offer is found only to be 7.5 percent liable and, therefore, only obligated to pay \$75,000. Now, a huge amount of that particular defendant's attorneys' fees are shifted to the plaintiff even though he got exactly what he wanted, because it was not until the time of trial that he had a sense of how the different negligent defendants would be apportioned. You lose when you win under the Goodlatte scenario. It is not even about frivolous cases, not about nonmeritorious cases. It is about meritorious cases where the apportionment of damages is slightly different as it almost always will be than the plaintiff originally thought.

Mr. BRYANT of Texas. That is an example.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

This does not just deal with frivolous cases. This is intended to encourage settlement in all cases by imposing risk on all parties. We talk all the time here about somebody risking loss, but nobody talks about the fact that if you are the defendant in a lawsuit and you are an individual or you are a small businessperson and you have to spend a fortune in attorneys' fees, that happens to you whether you win the case or lose the case under our current law.

All we are doing is saying we are making the risk equal between the plaintiffs and defendants.

Mr. BRYANT of Texas. The same thing happens to the plaintiff.

Mr. GOODLATTE. Not if it is a contingent case.

Mr. BRYANT of Texas. Somebody is paying those costs.

Mr. GOODLATTE. Not the plaintiff.

Mr. BRYANT of Texas. You have got the same drag on the plaintiff as there is on the defendants, because the lawyer has to carry the burden. He is not going to do it unless he thinks he has a good chance of winning. That is the whole point of this.

I would simply conclude by pointing out the argument, at bottom, on your side of the aisle is we do not have any faith in the judges, most of whom were appointed by Republican Presidents, and we do not have any faith in the American people when you take them 12 at a time and put them in the jury

box and show them facts, so we are going to try to write the rules in a way to make sure nobody ever files a case unless it is an absolute slam dunk winner. I do not think that is fair to the middle class.

I think you should vote for the Berman amendment.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

(At the request of Mr. BERMAN and by unanimous consent, Mr. BRYANT of Texas was allowed to proceed for 2 additional minutes.)

Mr. BRYANT of Texas. Mr. Chairman, I would like to say in conclusion if you vote for the Berman amendment, what you get is a system which the gentleman from Pennsylvania [Mr. MCHALE] had planned to add on to the Goodlatte amendment that would instead be the bill that would say we are going to get rid of these frivolous cases in the first 90 days, but you would not leave us in the situation if you voted for the Berman amendment, you would not have the situation of going through the 90-day process and then facing losing your life's savings because you brought a meritorious case but for some reason or other you happened to lose that.

Mr. MCHALE. If the gentleman will yield, Mr. Chairman, I appreciate the kind, if belated, comments my amendment is now receiving, and in the event that in the vote on the Berman amendment, the Berman amendment is unsuccessful, I hope those kind words of praise are remembered when the McHale amendment on its merits is brought to a vote.

□ 1845

Mr. BRYANT of Texas. Let me make the point that the kind words for the gentleman from Pennsylvania [Mr. MCHALE], as reported to us, in the DSG report, indicated it was an amendment to replace the Goodlatte language. But if it is an add-on, it makes the bill twice as bad rather than good.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

(On request of Mr. BERMAN and by unanimous consent, Mr. BRYANT was allowed to proceed for 2 additional minutes.)

Mr. BRYANT of Texas I yield to the gentleman from California.

Mr. BERMAN. I thank the gentleman from Texas for yielding to me.

First of all, the gentleman from Virginia [Mr. GOODLATTE] says what we are trying to do is encourage settlements, avoid going to jury trials and the expense of that. So we are trying to put some risk on both parties. But nowhere in this bill is there any effort on to equate the risks. The middle-class plaintiff or middle-class defendant or small business man is treated exactly the same as the multibillion-dollar corporation.

Shifting fees, shifting fees from General Motors to a plaintiff is not a massive deterrent to General Motors ag-

gressively litigating and seeking to throw whatever smoke it can up to defeat a legitimate claim. Shifting fees from the average plaintiff to General Motors means that case will never be brought, that is what this is about.

This means no case will be brought under the Federal diversity jurisdiction, and so the problem with the McHale amendment, in addition to the Goodlatte amendment, is, as long as the Goodlatte language stays in this bill, plaintiffs are not going to utilize their rights under the Federal diversity statute.

It would have been better to repeal it because this way you are saying plaintiffs cannot utilize it but if a defendant thinks he can gain from it, he can remove it. You do not even have the fairness in your language to eliminate the ability to remove if it is not in the Federal court. It is all defendant-oriented. It does not deal with the frivolous case. The McHale amendment at least focuses on that. That is why I think that should be in place instead of the Goodlatte amendment.

Mr. MOORHEAD. Mr. Chairman, I rise to oppose the Berman amendment to the McHale amendment and to oppose the McHale amendment.

Mr. Chairman, the Berman amendment really destroys all the loser-pays provisions, and particularly the Goodlatte amendment, which we have been working on for several days, in fact for a couple of weeks. The original amendment, Mr. McHale's amendment, is much broader than the bill itself, and we have not had an opportunity in committee or in hearings or anything else to go over this broad an amendment.

I think that it destroys the possibility of the bill passing. I think it weakens the bill. In that respect I would, as chairman of the subcommittee, be willing to have hearings on the subject later on.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman for yielding to me.

Does not the gentleman concede that this moves the measure out of the draconian nature of punishing people for bringing lawsuits to dealing with lawsuits that may in fact be frivolous, malicious, or fraudulent? Is that not a good thing?

Mr. MOORHEAD. One thing in this argument today, we have come up with the idea that plaintiffs are always poor and defendants are always rich. That is far from the truth. A plaintiff can pick a forum, he can file in the Federal court if there is diversity, he can bring the defendant where the defendant never wants to go.

There are lots of defendants who are worth modest sums of money who could be totally destroyed by the action itself being filed against him. Then to say that he does not have a right in frivolous cases or under cir-

cumstances where there is no good cause to get his attorneys' fees back, he is left penniless anyway.

Mr. CONYERS. Let me ask the gentleman one thing. When was the last time the gentleman heard a corporation look on television and see an ad for a plaintiff's law firm saying, "No payment if we don't win"? Has the gentleman ever heard of a corporation going to a lawyer like that? I don't think so. Has the gentleman ever heard, before the time that we could use television—and he may have been a plaintiff's lawyer once—did you not normally get people who could not afford a lawsuit?

Mr. MOORHEAD. A lot of lawsuits.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, what is being overlooked here is we are talking about a mechanism that encourages reasonable settlements of lawsuits by imposing risks on all the parties in the case. And we limit that risk for those who talk about the deep pockets. Nobody has to pay the other side's attorneys' fees whether the other side is the very poor person or the other side is General Motors or whoever. No one has to pay them any more than they pay their own attorney.

What we are doing here is creating incentives for parties to settle cases that should be settled by letting them know that there is a risk to not settling it and creating reasonable behavior on the part of parties.

If we accept the Berman amendment, we will have lost all that effort to discourage lawsuits from going to trial in cases and adding to the cost of litigation in this country.

I urge opposition to this amendment.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I am happy to yield to the gentleman from Michigan.

Mr. CONYERS. I thank the gentleman once again.

Mr. Chairman, I always like to hear the gentleman from Virginia [Mr. GOODLATTE] tell us what he is trying to do because it is totally unvarnished and it is straight on the table. He is trying to end lawsuits for people who may not be able to afford them regardless of whether they have merit or not. Thankfully, he said it repeatedly during the course of this debate, and that is precisely my objection to this whole bill.

A person can be injured and not have any money and have a totally meritorious lawsuit, and he should not be held accountable to pay for the attorneys' fees whether he wins or loses. The test is the preponderance of the evidence. That is 51 percent to 49 percent.

The plaintiff is not a lawyer or a judge, he does not know what is happening.

So I am saying that is the unfairness that the gentleman from Virginia [Mr. GOODLATTE] keeps putting on the table that underscores more and more peoples' objections to this bill.

The CHAIRMAN. The time of the gentleman from California [Mr. MOORHEAD] has expired.

(By unanimous consent, Mr. MOORHEAD was allowed to proceed for 2 additional minutes.)

Mr. MOORHEAD. I yield further to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Mr. Chairman, yes, I will freely confess that I want to encourage settlement of lawsuits. The fewer of them brought into court the better. Every lawsuit has a solution to it. We want the parties to find that solution before they get into court. And the best way to do that is to give the parties incentives to find those solutions on their own before they get into court.

The defendant always faces that incentive because a defendant always has to pay their attorneys on a hourly basis. That does not happen in contingent fee cases for plaintiffs, where, as I have said before, you look in the phone book and you will find ad after ad or watch television, "No fee if no recovery." That is what is driving litigation.

I am in favor of contingent fees because it helps a lower-income person get into court. But the problem is that we should never ever say there is no risk attached to bringing the case in court. That is what this does.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. I thank the gentleman for yielding to me.

Mr. Chairman, I point out to the gentleman: that there is no risk attached? That is absolutely preposterous. Anyone who has ever been close to the courthouse knows that. A lawyer who starts the case and has to finance it, he is not going to prosecute a case he cannot win.

Mr. GOODLATTE. We are not talking about the plaintiff—

Mr. BRYANT of Texas. He is not going to go through months and years of work; that is preposterous to assume that that is going on. It is not going on. That is why you have the rule of sanctions that the gentleman and I discussed. It has not been used very much. There are not very many cases in which it ought to be used.

I think it is very interesting how the gentleman shifted the discussion from stopping frivolous cases to some kind of an incentive to settle. What you have here is a prohibition on an average person getting into a courthouse.

Mr. MOORHEAD. Reclaiming my time, the gentleman is probably right, there are cases that are filed that they intend to get something out of. But in many, many of these personal injury cases or others, they file a suit, hopeful to make a settlement.

Mr. ABERCROMBIE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I hope we can bring some sanity to all this. I am opposed to this, I am opposed to this bill. If you think about it, I cannot imagine why some of my friends on this side are for this.

We have been looking at working on this for several days, and in fact the past several weeks. We are getting rid of several centuries of people fighting against the king to be able to sue.

You cannot say that something is groundless or frivolous. If a man or woman says this is in their interest and they can find a lawyer to take it, they should be able to do it. Let us get to the bottom line here. I have done that. I have been on that side. I was libeled once, and I went to a lawyer and, thank God, I was able to find an attorney who took my case when I did not have any money. I was a student in college. He took that case and it helped set law in the State of Hawaii because we drove the State of Hawaii back. They had all their attorneys working against me. Anybody who is tuning in across this country, this bill is against you.

There are three things that define a free people: the right to have a jury trial; the right to vote; and the right to sue. The commoner can sue the king. The king in this country, the executive in this country, the big people, corporations, whoever it is, they have to stand in court against a small person. That is what this is all about.

I saw the Speaker today. He says he is somewhat of a historian. Well, he is a little loose with the facts. He got on television today and said, "Look through your rolodex and see who you have not sued today." What a sorry spectacle that is and what a sorry spectacle this is today.

I went down to take the law boards, and I walked out before I left—I took a look at the people in the room and decided I did not want to be with them. Walked out before it was over.

This is not a conservative position. I do not understand this position that is being taken by our Republican friends and, sad to say, some of my Democratic friends.

We should be defending the individual's right to sue the king. That is what this is all about. You can have all of the discussion back and forth when most of the country could not even understand what you were talking about. There is a bottom line to be drawn on all of this: Can the average American take someone else into court and see who is right? You have no business telling me that my views and my desires are groundless, that they are brought in bad faith, that they are brought for the purpose of harassment.

I was the one who was harassed in the case. I had a State senator who libeled me, who knew that he libeled me. It was during the Vietnam war situation, and if you do not think that can

reoccur here, you are making a sad mistake. He libeled me, and he knew it.

What they ended up doing it in order not to have to pay my lawyer, thank God I was able to find somebody who was willing to take my case, and he absorbed all the costs. I did not have any money. He took it on. I was glad to have him. That is what this is all about. Think about it.

This bill, H.R. 988, I do not care what you do—I day to the gentleman from Pennsylvania [Mr. MCHALE]—it is nothing against him individually, I say to the gentleman from California [Mr. BERMAN] it is not against him.

I realize they are trying to go against the tide. Do you know what this is? This is trying to dull the guillotine as it comes down to chop off your neck. We are trying to see if we cannot make the car break down on the way to your execution so you have to arrive on 4 rims instead of 4 wheels.

Think about this. There is not a lot of people on the floor, but if I get the chance on another amendment, I am going to come up further. The whole history of freedom is what is at stake with this. You do not have a contract to uproot the Constitution and the history of the Constitution and what brought us to this stage in America. The average person, the every-day man and woman, has a right to do down and say to somebody who is an attorney, willing to take their case, "Will you help me? I have nothing. I don't know if I have got a case that you can win, but I feel I have been injured, I feel I have been done harm. Will you take my case, will you step up to the plate for me?"

That attorney has to think long and hard, Mr. Chairman, because that attorney does not know whether he or she can afford to do that, does not know that they can take them on.

And as for settling cases, let me tell you I have been a member of a city council, and I have been a member who had to decide when we were the deep pocket with only 1 percent, and I voted every time that we were at fault to do that because that is what protected the system so the individual man and woman in this country knows that they are going to get a recourse of action that will result in justice for them.

□ 1900

Mr. WATT of North Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take 5 minutes. I just want to say "Amen" to my friend, the gentleman from Hawaii [Mr. ABERCROMBIE], and rise immediately after him so that everybody will quit thinking that I am the least mild-mannered fellow in this body. It is always nice to speak after the gentleman from Hawaii because then I do not sound like I am the ranting, raving guy in the body. But what he says is absolutely correct, and it goes back to what we discussed in the general debate, and

that is that we have a problem in our judicial system that ought to be attacked as if it were a gnat, and we are using a sledgehammer to attack it, and we have come in with a solution that swings the pendulum all the way to the other extreme and, in the process, does an injustice to a system of justice and a system of addressing grievances in this country that has been in place for centuries and centuries.

Mr. Chairman, we started by saying that our objective is to deal with lawsuits that have no merit, that are frivolous lawsuits. I say to my colleagues, "The problem is you can't deal with those lawsuits with this bill without throwing out the baby with the bath water, and so you come in with a piece of legislation that is designed to revamp and reshape the entire system of justice in civil cases just so we can deal with one, or two, or even a handful of, or a thousand frivolous lawsuits or abuses of the process, and that is not the way we ought to be proceeding."

The amendment that has been offered by the gentleman from California [Mr. BERMAN] would limit this bill to frivolous lawsuits, which we were told was the primary motivating factor for coming forward with this bill in the first place, and, as we get further and further into it, now we find that we are not dealing just with frivolous lawsuits, but we are putting in place a whole a new system that encourages, demands, forces people to resolve litigation whether they want to do it or not, and in the process disadvantaging people who need access to the justice system and makes it impossible for them to come into the court without substantial fear of risking all of their assets.

I think we ought to step back from this, as the gentleman from California [Mr. BERMAN] has encouraged us to do, and put this system into place, limit it to frivolous lawsuits, which is the primary motivating factor and the factor that it should be applicable to and bring some sanity back to this process.

I say to my colleagues, "Don't throw out our whole system of judicial works just to get a few bad apples out of the system."

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. WATT of North Carolina. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I say to the gentleman, "We ought to point out, if we don't adopt the Berman-McHale amendment, it not only will apply to frivolous lawsuits, it will also apply to meritorious lawsuits, those that are not—but not as meritorious as you thought they were. You can win your suit. You can win, essentially prevail, but if you come in essentially just under the offer, then you will be beset with these draconian provisions. That is not right."

Mr. WATT of North Carolina. That is correct, and I think the best analysis we heard of it is, "You win and lose cases in the real world. The burden of

proof is on one side or the other, but you win a case with a 51 percent versus a 49 percent."

Every case that gets filed, most cases that get filed, 90 percent, 95 percent of the cases that get filed, are close questions. They are not slam dunks, as we say in basketball lingo, and that is what this bill is designed to discourage—

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. WATT] has expired.

Mr. INGLIS of South Carolina. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise for two reasons: First, to correct something that I said in the Committee on the Judiciary and, second, to engage the gentleman from Virginia [Mr. GOODLATTE] in a colloquy, but first as to the correction:

In committee I was very concerned about the amendment of the gentleman from Virginia [Mr. GOODLATTE]. Now I am much more convinced of the rectitude of the amendment in that it does improve the bill, and so I apologize to the gentleman for misunderstanding it at the Committee on the Judiciary and feel that he did make a significant improvement to the bill. That is my first observation.

The second:

My reason for engaging the gentleman in a colloquy just briefly, Mr. Chairman, is to ask whether at some point—I am, along with the gentleman from Pennsylvania [Mr. GEKAS], a little bit interested in the Michigan rule that would possibly sharpen up loser pays. We are not going to offer that at this juncture, but I guess I am asking the gentleman from Virginia if possibly somewhere down the road we might look at that if this does not work as well as we think it is going to work. I am concerned about that middle ground and hoping that we can push the parties even closer towards settlement and sharpen it up a little bit, but maybe the gentleman would have some thoughts about—

Mr. GOODLATTE. Mr. Chairman will the gentleman yield?

Mr. INGLIS of South Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I am also interested in finding ways to encourage more reasonableness in litigation and to encourage more settlement of cases. I think that is the intent of the amendment of the gentleman from Pennsylvania [Mr. GEKAS], but quite frankly—and also let me say that we will find out, if this passes and becomes law, and despite all the apocalyptic statements of many on the other side, this applies to about 1 or 2 percent of all the civil litigation in this country, so we are going to find out, without endangering all those rights, whether or not this does work. But if it does, then I think we answer one of the objections they have by not taking the Gekas procedure and splitting the difference between the two parties, wherever they end up, and say-

ing that, for example, the plaintiff last offered \$100,000, and the defendant last offered \$50,000, putting it at \$75,000, so that if the plaintiff gets \$75,001, the plaintiff wins and pays—the defendant pays attorney fees. If the plaintiff gets \$74,999, the plaintiff wins but pays the defendant's attorney fees. Their objection to that is that that is not fair that the winner pays.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. Let me finish that point.

They are correct that there are circumstances where a plaintiff in a case could get a judgment under these circumstances and wind up paying attorney fees for the defendant, but under the current bill, as it is formulated, that only occurs if they are way off in their settlement negotiations.

So, for example, if that plaintiff is at \$100,000 in the case, and the defendant is offering \$50,000, and they do not get any further, under the current rule in this bill only if the plaintiff recovers more than \$100,000 will the defendant pay the plaintiff's attorney fees; only if the plaintiff gets less than \$50,000, or \$50,000 less than the plaintiff's last offer, would the plaintiff pay the defendant's attorney fees because the plaintiff was not reasonable in negotiations. The proof of the reasonableness is in the jury's final award, and that is the basis of this mechanism. It will push parties together to settle cases.

I think that the amendment offered by the gentleman from Pennsylvania [Mr. GEKAS] is well intentioned, but I think it may be too razor sharp for the comfort of some on the other side.

Mr. INGLIS of South Carolina. Reclaiming my time, I point out to the gentleman from Virginia I think that he has well stated that he is in a middle position here, between the position I might take and the position the gentleman from Michigan might take and, therefore, shows the reasonableness of the gentleman from Virginia's point of view.

I think that in the future I hope that we can come back and revisit to figure out whether we need to tighten it up a little bit and move it toward this direction.

Mr. GOODLATTE. Mr. Chairman, would the gentleman yield further?

Mr. INGLIS of South Carolina. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, what I am neglecting to say here is that the American rule that is championed by some on the other side applies in that example that I just gave where the jury comes back with an award between \$100,000 and \$50,000. Neither party pays the other party's attorney fees because neither of them has a claim that they made an offer better than what the other party finally achieved in the case.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. INGLIS of South Carolina. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I would hope we all support the American rule rather than one side, but let me point out to my colleagues that the whole notion that there is some superior method enforcing settlement of cases as opposed to having them tried is one that I find undermines the whole basis of loser pays.

The fact of the matter is that of course everybody would love to settle. But where the weight and the power is more on one side than on the other, settlement becomes a very unfair tool, and that is why we go to trial.

The judges are trying to get the parties to settle, the parties themselves frequently want to settle, and now here comes the Congress, "You will settle these cases or you will be penalized," and that is the underlying part of it that I cannot agree with.

Mr. INGLIS of South Carolina. Reclaiming my time, Mr. Chairman, I say to the gentleman from Michigan the problem is that I think he is overlooking the fact that in many of these cases the plaintiff would not have much risk. Talking about contingency fee arrangement. The defendant is the one at risk, who is hanging out to dry as a small business person. They are hanging out to dry while the plaintiff has very little risk.

The Chairman. The time of the gentleman from South Carolina [Mr. INGLIS] has expired.

Mr. BURTON of Indiana. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to have a hypothetical story, and then I would like to ask a question of the gentleman from Virginia [Mr. GOODLATTE].

Fellow is driving across the Ohio State-Indiana border, and interstate trucking company has a trucker who loses control of the vehicle through his own negligence, and he hits this car, and he puts this fellow in the hospital, and the fellow has a major shoulder injury, and he goes through several surgeries, and after several surgeries it is evident that he is going to be physically impaired probably for the rest of his life. So he goes to the trucker, trucking company, or to his insurer, and he says, "Look, I'm going to be impaired the rest of my life. I'd like, to have a \$500,000 damage settlement," his attorney does.

And they say, "Well, I tell you what. We've looked at your case, and we think we'll give you \$50,000."

And so they come back, and they go through the preliminaries, and the plaintiff says, "OK, I'll go to \$400,000," and the defendant says, "We'll go up to \$100,000," and there they hit the loggerhead, and they go to a trial, and the trial goes on for—this process drags out for about 2 or 3 months, and during the trial the jury does not like the way the defendant—or the plaintiff looks, or they do not like some of the things that his attorney says, and they decide to give him \$75,000 instead of the

\$100,000, which is lower than the last best offer, and, because they settle on \$75,000, he is liable for all of the defense's legal fees, as I understand it.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. BURTON of Indiana. I yield to the gentleman from Virginia.

Mr. GOODLATTE. He is only liable with the defense's legal fees to the extent that they do not exceed his own legal fees. He cannot pay any more than he pays his own lawyer.

Mr. BURTON of Indiana. So his lawyer, if he was on a 40-percent contingency basis, and he got a—

Mr. GOODLATTE. The bill provides a mechanism for calculating a reasonable value for those attorney fees if the case was brought on—

Mr. BURTON of Indiana. OK; well, let us say it is a 40-percent contingency basis; OK? So 40 percent of \$75,000 is what, \$30,000?

Mr. GOODLATTE. The bill does not work based on percentage. It bases on a reasonable value and the hourly rate of—

Mr. BURTON of Indiana. Let us say that it is a reasonable value and that it comes out to \$25,000.

Mr. GOODLATTE. Right.

Mr. BURTON of Indiana. OK; so he has to pay \$25,000 of the defense's legal fees?

Mr. GOODLATTE. That is correct.

Mr. BURTON of Indiana. So that would be a total of \$50,000 that he would be out as far as legal obligations.

□ 1915

For his shoulder injury, that is a permanent impairment, he now is going to get a \$25,000 settlement in reality.

Mr. GOODLATTE. The fact of the matter is he turned down a \$100,000 settlement offer. His \$300,000 last offer was four times what the jury finally gave him.

Mr. BURTON of Indiana. Reclaiming my time, the man has a permanent disability. Because of the jury's decision, he is going to end up with \$25,000, and he has a lifetime of pain and suffering. It just seems to me there ought to be some balance in this. For the plaintiff to pay 100 percent of the legal fees of the defendant is exorbitant. I think there ought to be some compromise. There ought to be a penalty, but I do not think the penalty should be 100 percent. It seems to me that something like 25 percent would be a more realistic figure. There is a penalty involved, he knows he is going to have to pay, but 100 percent loser-pays makes absolutely no sense to me.

Mr. GOODLATTE. If the gentleman will yield further, the gentleman makes a good point that the further away from the settlement and the further away from the defendant's last offer the plaintiff is perhaps the less reasonable he is and that the percentage might vary.

If the gentleman has some kind of a sliding scale for that type of case, I would be happy to work with the gentleman to do that. I am not sure that

a flat percentage would be applicable in every case, because what about the case where he asks for \$100,000, the defendant offers \$50,000, and the jury awards him \$2,000 because there is some minor aspect of the case he is right about. But he should not have brought the whole case into court, and left \$50,000 on the table to get \$2,000.

Mr. BURTON of Indiana. Reclaiming my time, I do not know how you would work out a sliding scale. It would be very difficult. I do believe there ought to be a penalty for a lawsuit where they are way out of kilter, but 100 percent just does not seem fair to me. So I will be proposing an amendment, and, in the interim, if we could talk and maybe figure out some kind of a compromise that would be fine. I will propose an amendment that says loser pays 25 percent of the defendant's legal fees, and not 100 percent.

Mr. GOODLATTE. If the gentleman will yield further, I would like to point out to the gentleman that attorneys fees are limited not only in respect to not paying more than you pay your own attorney's fee or the value of what you would have paid based on an hourly rate, it is also limited to not more than 10 days before trial through the trial. So all the earlier discovery in the case and that sort of thing, you are not exposed to paying for that either, so long as you are making a good faith settlement offer, which essentially can be any settlement offer up to 10 days before the trial.

Mr. BURTON of Indiana. Everything before 10 days before the trial is not included?

Mr. GOODLATTE. That is correct. You can limit your exposure substantially the way we designed this bill now, compared to the original loser-pays provision in the original bill.

The CHAIRMAN. The time of the gentleman from Indiana [Mr. BURTON] has expired.

(By unanimous consent, Mr. BURTON of Indiana was allowed to proceed for 1 additional minute.)

Mr. BURTON of Indiana. Mr. Chairman, 10 days before the trial, this is a very contentious case, the defense has two attorneys working on it at 10 hours a day, 20 hours a day at \$100 an hour, that is \$2,000 a day, but I think that is a low fee for some of these attorneys. Say it is \$2,000 a day plus clerical and everything else. In 10 days you are looking at \$25,000 or \$30,000 in legal fees.

Mr. GOODLATTE. That could arise.

Mr. BURTON of Indiana. Or more, if you have a really involved case.

Mr. GOODLATTE. If the gentleman will yield, that is limited by the amount that the plaintiff is paying their own attorney's fees in this case. Do not forget this is also applying to a defendant and also applies not just to tort cases. In fact, the vast majority of the cases, diversity cases, are going to be contract actions between people suing each other for debt, and there

will be plenty of times when the plaintiff will want to recover attorney fees from the defendant.

Mr. BURTON of Indiana. I really believe we should take a hard look at having a lower percentage than 100 percent. I think 25 percent sounds reasonable.

Mr. HASTINGS of Florida. Mr. Chairman, I move to strike the requisite number of words.

I would like to engage in a colloquy with the gentleman from Virginia [Mr. GOODLATTE].

Am I to understand that the objective is to encourage settlement of cases in Federal court?

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS of Florida. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, there are two objectives of this provision in the bill. One is to discourage the bringing of frivolous, fraudulent, and nonmeritorious claims. The other is to encourage settlement of cases. That is correct.

Mr. HASTINGS of Florida. Is the gentleman aware that for the last decade, 92 percent of all cases that were filed as civil cases were ultimately settled in Federal Court?

Mr. GOODLATTE. I am aware of that fact.

Mr. HASTINGS of Florida. It is the 8 percent you are worried about?

Mr. GOODLATTE. It is the overload in the courts and the fact that a lot of those cases that were settled were settled for nominal sums of money where one party or the other feels the other party was not acting reasonably. This gives a defendant in a case the opportunity to say I am not liable, I am not going to offer settlement, and if I go to court, I am entitled to bring something from somebody who brought a suit against me, made me go to great expense, and they are not having to pay anything because they may or may not have the case on a contingent fee basis.

Mr. HASTINGS of Florida. How do you arrive at that objectively? I heard you say a moment ago it was based on what the jury ultimately decides as to whether or not there was ultimate merit. Do you not contemplate excellent litigants being on the defense side or plaintiff's side being more persuasive or jurors that are quirky or judges who are stupid, or do you not contemplate any of those things?

Mr. GOODLATTE. All of those things play a role in the case, and all of those things need to be taken into account, as they are taken into account right now when you look at determining whether or not you make a settlement offer in a case. The same thing is true right now. If you know that the judge generally tends to favor the plaintiff or the judge generally tends to favor the defendant, you are going to structure your settlement offer differently as a result of that. If you think you have a good jury in a case, you are going to

make a good settlement offer than otherwise.

All of those factors are true right now. What we are saying is right now there should not be the atmosphere that says there are some litigants in court who are approaching it from the standpoint that it is risk free, either because they are claiming fraud or have a frivolous suit.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, do you not think that rule XI with the sanctions enforcement has been utilized such that lawyers are mindful of the existence of that rule and have avoided bringing frivolous litigation to court, and are you not also mindful that judges pick up real quickly on frivolous litigation and that normally it is dismissed? You are talking, I believe, about the exception to the rule.

Mr. GOODLATTE. Rule XI is on average applied in each district court system in this country, the Western District of Virginia, for example, where I practiced, very, very rarely, maybe once or twice or three times on average in a year out of all the cases that are filed.

Mr. HASTINGS of Florida. Mr. Chairman, reclaiming my time, that is not true for every district. I presided in the Southern District and used it more than four times in a year as a presiding judge, as did countless other judges. Maybe we had the kinds of litigants that would come forward and we had to sanction them.

Mr. GOODLATTE. If the gentleman would yield further on that interesting point, the testimony we heard during the hearing was that before rule XI was amended and weakened a couple of years ago, during the 10-year time frame before that, there were a total of 3,000 cases. That is 300 each year for 10 years, divided into 100 different district court systems in the Federal District Court system in the country. So on average, it is not being used very often.

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. HASTINGS of Florida. I yield to the gentleman from California.

Mr. BERMAN. Just noting in the hope that the debate on this amendment and the amendment to the amendment are winding down, I would just like to use the gentleman's time if I might to restate the purpose of the Berman amendment.

The base bill and the Goodlatte amendment do not take into account the merits of the case or the ability of either party. It does not seek to spread the risks equally. It essentially punishes the person who has less resources vis-a-vis the person or corporation who has greater resources.

The McHale substitute has the benefit of actually getting at what the proponents of this bill have been talking about, which is weeding out the frivolous case.

So because the McHale substitute seeks to get at the frivolous lawsuit, even though it is cast in a fashion that

is different than I would have drafted it, I think it makes a better proposal than the Goodlatte proposal. So the Berman amendment simply says McHale in place of Goodlatte, not McHale in addition to Goodlatte.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. BERMAN] to the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Pursuant to clause 2(c) of rule XXIII, the Chair may reduce to 5 minutes the minimum time for electronic voting on the underlying McHale amendment, if ordered, without intervening business or debate.

The vote was taken by electronic device, and there were—ayes 186, noes 235, not voting 13, as follows:

[Roll No 201]

AYES—186

Ackerman	Frost	Moran
Andrews	Furse	Morella
Baesler	Gejdenson	Murtha
Baldacci	Gephardt	Nadler
Barcia	Gilman	Neal
Barrett (WI)	Gonzalez	Obestar
Bateman	Gordon	Obey
Beilenson	Green	Olver
Bentsen	Gutierrez	Orton
Berman	Hall (OH)	Owens
Bevill	Hamilton	Pallone
Bishop	Harman	Pastor
Bonior	Hastings (FL)	Payne (NJ)
Borski	Hayes	Peterson (FL)
Boucher	Hilliard	Peterson (MN)
Browder	Hinches	Pomeroy
Brown (CA)	Holden	Poshard
Brown (FL)	Hoyer	Rahall
Brown (OH)	Jackson-Lee	Reed
Bryant (TX)	Jacobs	Reynolds
Cardin	Jefferson	Richardson
Clay	Johnson (SD)	Rivers
Clayton	Johnson, E. B.	Roemer
Clement	Johnston	Rose
Clyburn	Kanjorski	Roybal-Allard
Collins (IL)	Kaptur	Rush
Collins (MI)	Kennedy (MA)	Sabo
Conyers	Kennedy (RI)	Sanders
Costello	Kennelly	Sawyer
Coyne	Kildee	Schroeder
Cramer	Kleczka	Schumer
DeFazio	Klink	Scott
DeLauro	LaFalce	Serrano
Dellums	Lantos	Sisisky
Deutsch	Laughlin	Skaggs
Diaz-Balart	Levin	Skelton
Dicks	Lewis (GA)	Slaughter
Dingell	Lincoln	Spratt
Dixon	Lipinski	Stark
Doggett	Lofgren	Stokes
Dooley	Longley	Studds
Doyle	Lowey	Stupak
Duncan	Luther	Tanner
Durbin	Maloney	Thompson
Edwards	Manton	Thornton
Ehrlich	Markey	Thurman
Engel	Martinez	Torres
English	Mascara	Torricelli
Eshoo	Matsui	Towns
Evans	McCarthy	Tucker
Farr	McDermott	Velazquez
Fattah	McKinney	Vento
Fazio	Meehan	Visclosky
Fields (LA)	Meek	Volkmer
Filner	Menendez	Ward
Flake	Mfume	Waters
Foglietta	Minge	Watt (NC)
Ford	Mink	Waxman
Fox	Moakley	Weldon (PA)
Frank (MA)	Mollohan	Williams

Wilson  
Wise

Woolsey  
Wyden

Wynn  
Yates

NOES—235

Abercrombie  
Allard  
Archer  
Arney  
Bachus  
Baker (CA)  
Baker (LA)  
Ballenger  
Barr  
Barrett (NE)  
Bartlett  
Barton  
Bass  
Bereuter  
Billray  
Bilirakis  
Bliley  
Blute  
Boehlert  
Boehner  
Bonilla  
Bono  
Brewster  
Brownback  
Bryant (TN)  
Bunn  
Burr  
Burton  
Buyer  
Callahan  
Calvert  
Camp  
Canady  
Castle  
Chabot  
Chambliss  
Chapman  
Chenoweth  
Christensen  
Chrysler  
Clinger  
Coble  
Collins (GA)  
Combest  
Cooley  
Cox  
Crane  
Crapo  
Cremeans  
Cubin  
Cunningham  
Danner  
Davis  
de la Garza  
Deal  
DeLay  
Dickey  
Doolittle  
Dornan  
Dreier  
Dunn  
Ehlers  
Emerson  
Ensign  
Everett  
Ewing  
Fawell  
Fields (TX)  
Flanagan  
Foley  
Forbes  
Fowler  
Franks (CT)  
Franks (NJ)  
Frelinghuysen  
Frisa  
Funderburk  
Gallegly  
Ganske

Gekas  
Geren  
Gilchrest  
Gillmor  
Goodlatte  
Goodling  
Goss  
Graham  
Greenwood  
Gunderson  
Gutknecht  
Hall (TX)  
Hancock  
Hansen  
Hastert  
Hastings (WA)  
Hayworth  
Hefley  
Heineman  
Herger  
Hilleary  
Hobson  
Hoekstra  
Hoke  
Horn  
Hostettler  
Houghton  
Hunter  
Hutchinson  
Hyde  
Inglis  
Istook  
Johnson (CT)  
Johnson, Sam  
Jones  
Kasich  
Kelly  
Kim  
King  
Kingston  
Klug  
Knollenberg  
Kolbe  
LaHood  
Largent  
Latham  
LaTourette  
Lazio  
Leach  
Lewis (CA)  
Lewis (KY)  
Lightfoot  
Linder  
Livingston  
LoBiondo  
Lucas  
Manzullo  
Martini  
McCollum  
McCrery  
McHale  
McHugh  
McInnis  
McKeon  
McNulty  
Metcalf  
Meyers  
Mica  
Miller (FL)  
Mineta  
Molinari  
Montgomery  
Moorhead  
Myers  
Myrick  
Nethercutt  
Neumann  
Ney  
Norwood

Nussle  
Ortiz  
Oxley  
Packard  
Parker  
Paxon  
Payne (VA)  
Petri  
Pickett  
Pombo  
Porter  
Portman  
Pryce  
Quillen  
Quinn  
Radanovich  
Ramstad  
Regula  
Riggs  
Roberts  
Rogers  
Rohrabacher  
Ros-Lehtinen  
Roukema  
Royce  
Salmon  
Sanford  
Saxton  
Scarborough  
Schaefer  
Schiff  
Seastrand  
Sensenbrenner  
Shadegg  
Shaw  
Shays  
Shuster  
Skeen  
Smith (MI)  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Solomon  
Souder  
Spence  
Stearns  
Stenholm  
Stockman  
Stump  
Talent  
Tate  
Taubin  
Taylor (MS)  
Taylor (NC)  
Tejeda  
Thomas  
Thornberry  
Tiahrt  
Torkildsen  
Traffant  
Upton  
Vucanovich  
Waldholtz  
Walker  
Fox  
Walsh  
Wamp  
Watts (OK)  
Weldon (FL)  
Weller  
White  
Whitfield  
Wicker  
Wolf  
Young (AK)  
Young (FL)  
Zeliff  
Zimmer

NOT VOTING—13

Becerra  
Bunning  
Coburn  
Coleman  
Condit

Gibbons  
Hefner  
McDade  
McIntosh  
Miller (CA)

Pelosi  
Rangel  
Roth

□ 1943

Mrs. KENNELLY and Mr. TORRICELLI changed their vote from "no" to "aye."

Mrs. JOHNSON of Connecticut and Mr. MINETA changed their vote from "aye" to "no."

So the amendment to the amendment was rejected.

The result of vote was announced as above recorded.

□ 1945

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. MCHALE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MCHALE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 115, noes 306, not voting 13, as follows:

[Roll No 202]

AYES—115

Andrews  
Baker (CA)  
Barrett (WI)  
Bateman  
Beilenson  
Bentsen  
Bevill  
Bilbray  
Bishop  
Blute  
Boucher  
Brown (OH)  
Chenoweth  
Combest  
Coyne  
Cramer  
Crapo  
Davis  
DeLay  
Deutsch  
Diaz-Balart  
Dingell  
Dooley  
Doolittle  
Doyle  
Duncan  
Engel  
English  
Ensign  
Fazio  
Foglietta  
Forbes  
Fowler  
Fox  
Frank (MA)  
Franks (NJ)  
Gejdenson  
Gephardt  
Gilchrest

Gilman  
Gonzalez  
Goodlatte  
Gordon  
Goss  
Green  
Greenwood  
Gutknecht  
Hall (OH)  
Harman  
Herger  
Hoke  
Holden  
Horn  
Inglis  
Jefferson  
Johnston  
Kanjorski  
Kaptur  
Kelly  
Klink  
Kolbe  
Latham  
Lazio  
Levin  
Lincoln  
Luther  
Manton  
Mascara  
McCollum  
McHale  
McKinney  
Meek  
Meyers  
Mineta  
Mollohan  
Montgomery  
Moran  
Murtha

Obey  
Orton  
Pallone  
Parker  
Peterson (FL)  
Petri  
Pomeroy  
Porter  
Rahall  
Ros-Lehtinen  
Rush  
Sanford  
Sawyer  
Scarborough  
Schumer  
Shadegg  
Sisisky  
Smith (MI)  
Souder  
Spence  
Stark  
Stenholm  
Studds  
Taylor (MS)  
Torkildsen  
Torricelli  
Traffant  
Tucker  
Upton  
Visclosky  
Vucanovich  
Waldholtz  
Weldon (FL)  
Weldon (PA)  
Wicker  
Wise  
Zimmer

NOES—306

Abercrombie  
Ackerman  
Allard  
Archer  
Arney  
Bachus  
Baesler  
Baker (LA)  
Baldacci  
Ballenger  
Barcia  
Barr  
Barrett (NE)  
Bartlett  
Barton  
Bass  
Bereuter  
Berman  
Bilirakis  
Bliley  
Boehlert  
Boehner  
Bonilla

Bonior  
Bono  
Borski  
Brewster  
Browder  
Brown (CA)  
Brown (FL)  
Brownback  
Bryant (TN)  
Bryant (TX)  
Bunn  
Burr  
Burton  
Buyer  
Callahan  
Calvert  
Camp  
Canady  
Cardin  
Castle  
Chabot  
Chambliss  
Chapman

Christensen  
Chrysler  
Clay  
Clayton  
Clement  
Clinger  
Clyburn  
Coble  
Collins (GA)  
Collins (IL)  
Collins (MI)  
Conyers  
Cooley  
Costello  
Cox  
Crane  
Cremeans  
Cubin  
Cunningham  
Danner  
de la Garza  
Deal  
DeFazio

DeLauro  
Dellums  
Dickey  
Dicks  
Dixon  
Doggett  
Dornan  
Dreier  
Dunn  
Durbin  
Edwards  
Ehlers  
Ehrlich  
Emerson  
Eshoo  
Evans  
Everett  
Ewing  
Farr  
Fattah  
Fawell  
Fields (LA)  
Fields (TX)  
Filner  
Flake  
Flanagan  
Foley  
Ford  
Franks (CT)  
Frelinghuysen  
Frisa  
Frost  
Funderburk  
Furse  
Gallegly  
Ganske  
Gekas  
Geren  
Gillmor  
Goodling  
Graham  
Gunderson  
Gutierrez  
Hall (TX)  
Hamilton  
Hancock  
Hansen  
Hastert  
Hastings (FL)  
Hastings (WA)  
Hayes  
Hayworth  
Hefley  
Heineman  
Hilleary  
Hilliard  
Hinchev  
Hobson  
Hoekstra  
Hostettler  
Houghton  
Hoyer  
Hunter  
Hutchinson  
Hyde  
Istook  
Jackson-Lee  
Jacobs  
Johnson (CT)  
Johnson (SD)  
Johnson, E. B.  
Johnson, Sam  
Jones  
Kasich  
Kennedy (MA)  
Kennedy (RI)  
Kennelly  
Kildee  
Kim

King  
Kingston  
Klecza  
Klug  
Knollenberg  
LaFalce  
LaHood  
Lantos  
Largent  
LaTourette  
Laughlin  
Leach  
Lewis (CA)  
Lewis (GA)  
Lewis (KY)  
Lightfoot  
Linder  
Lipinski  
Livingston  
LoBiondo  
Lofgren  
Longley  
Lowey  
Lucas  
Maloney  
Manzullo  
Markey  
Martinez  
Martini  
Matsui  
McCarthy  
McCrery  
McDermott  
McHugh  
McInnis  
McKeon  
McNulty  
Meehan  
Menendez  
Metcalf  
Mfume  
Mica  
Miller (FL)  
Minge  
Mink  
Moakley  
Molinari  
Moorhead  
Morella  
Myers  
Myrick  
Nadler  
Neal  
Nethercutt  
Neumann  
Ney  
Norwood  
Nussle  
Oberstar  
Olver  
Ortiz  
Owens  
Oxley  
Packard  
Pastor  
Paxon  
Payne (NJ)  
Payne (VA)  
Peterson (MN)  
Pickett  
Pombo  
Portman  
Poshard  
Pryce  
Quillen  
Quinn  
Radanovich  
Ramstad  
Reed

Regula  
Reynolds  
Richardson  
Riggs  
Rivers  
Roberts  
Roemer  
Rogers  
Rohrabacher  
Rose  
Roukema  
Roybal-Allard  
Royce  
Sabo  
Salmon  
Sanders  
Saxton  
Schaefer  
Schiff  
Schroeder  
Scott  
Seastrand  
Sensenbrenner  
Serrano  
Shaw  
Shays  
Shuster  
Skaggs  
Skeen  
Skelton  
Slaughter  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Solomon  
Spratt  
Stearns  
Stockman  
Stokes  
Stump  
Stupak  
Talent  
Tanner  
Tate  
Tauzin  
Taylor (NC)  
Tejeda  
Thomas  
Thompson  
Thornberry  
Thornton  
Thurman  
Tiahrt  
Torres  
Townsend  
Velazquez  
Vento  
Volkmer  
Walker  
Walsh  
Wamp  
Ward  
Waters  
Watt (NC)  
Watts (OK)  
Waxman  
Weller  
White  
Whitfield  
Williams  
Wilson  
Wolf  
Woolsey  
Wyden  
Wynn  
Yates  
Young (AK)  
Young (FL)  
Zeliff

NOT VOTING—13

Becerra  
Bunning  
Coburn  
Coleman  
Condit

Gibbons  
Hefner  
McDade  
McIntosh  
Miller (CA)

Pelosi  
Rangel  
Roth

□ 1954

The CHAIRMAN and Ms. EDDIE BERNICE JOHNSON of Texas changed their vote from "aye" to "no."

Messrs. FAZIO, SHADEGG, GUTKNECHT, FOX of Pennsylvania, and HERGER changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. CARDIN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wonder whether the subcommittee chairman would respond to a colloquy.

Mr. MOORHEAD. Mr. Chairman, will the gentleman yield?

Mr. CARDIN. I yield to the gentleman from California.

Mr. MOORHEAD. I will be glad to engage in a colloquy with the gentleman, Mr. Chairman.

Mr. CARDIN. Mr. Chairman, I am concerned that attorneys representing the Federal Government or any of its entities or instrumentalities in Federal courts not be held to a different standard under rule XI(c) than other attorneys.

Is it the intention of the subcommittee chairman that the sanctions in rule XI(c) for filing frivolous claims be applied with equal force?

Mr. MOORHEAD. Mr. Chairman, if the gentleman will continue to yield, I share the concern of the gentleman from Maryland. It is our intention that rule XI(c) be applied equally to all litigants, and that the Federal judges exercise no special restraint when dealing with the Federal Government.

Mr. CARDIN. I thank the subcommittee chairman, Mr. Chairman.

AMENDMENT OFFERED BY MR. HOKE

Mr. HOKE. Mr. Chairman, I offer an amendment.

The Chairman. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HOKE: Page 6, after line 24 (after section 4) insert the following:

**SEC. 5. CONTINGENT FEES OF ATTORNEYS.**

(a) IN GENERAL.—Part III of title 28, United States Code, is amended by adding at the end the following new chapter:

**"CHAPTER 80—CONTINGENT FEES OF ATTORNEYS**

"1051. Limitations on contingent fees.

"1052. Definition of qualifying settlement offer.

**"§ 1051. Limitations on contingent fees**

"(a) EFFECT OF QUALIFYING SETTLEMENT OFFER.—In any Federal civil action (except an action for the protection of civil rights, including the right to vote) in which a monetary recovery is sought, the compensation to the attorney representing a plaintiff—

"(1) shall, if a qualifying settlement offer is made to and accepted by that plaintiff not exceed the lesser of—

"(A) the sum of—

"(i) a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed; and

"(ii) actual expenses of the attorney in the action; or

"(B) 10 percent of the amount of the accepted qualifying settlement offer; and

"(2) shall, if no qualifying settlement offer is accepted by that plaintiff, not exceed the sum of—

"(A) that portion not greater than 33 percent, agreed upon by the attorney and the plaintiff before trial, of the amount by which the final recovery in the action exceeds the amount of the final qualifying settlement offer;

"(B) a reasonable hourly rate, previously agreed upon by the attorney and the plaintiff, for legal work actually performed before the final qualifying settlement offer is made; and

"(C) actual expenses of the attorney in the action.

**"§ 1052. Definition of qualifying settlement offer**

"For the purposes of this chapter a qualifying settlement offer is an offer by all defendants—

"(1) to settle all claims against the defendants in the pending action; and

"(2) made not later than 60 days after the date of initial contact in writing between the attorneys for the parties notifying the defendant of the claim against the defendant."

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 28, United States Code, is amended by adding at the end the following new item:

**"80. Contingent Fees of Attorneys ..... 1051"**

Redesignate succeeding sections accordingly.

Mr. CONYERS. Mr. Chairman, I reserve a point of order on the amendment.

Mr. HOKE. Mr. Chairman, what this piece of legislation does with this amendment to H.R. 988 is essentially to codify in Federal law what is already the legal code of just about every State bar association in all of the United States.

Here is the problem. What it does essentially is it says there will not be a contingent fee allowed when there is no contingency. Over the last several decades it has become increasingly easier to successfully prosecute a tort claim; that is, to seek and receive compensation for injury or damages to one's property.

During that same period the risks of an attorney representing a client under a contingent fee agreement have likewise decreased, and the attorney's compensation has increased dramatically. The purpose of this legislation is to ensure that contingent fees are earned only when there is a real contingency; that there be the potential of a large reward only when there is a proportionate risk.

A number of other good results will flow from this legislation. First, where there is no question of liability, which, as I have said, is in most of the cases where you have personal injury lawsuits, the injured consumer will end up with substantially more of the compensation, not the attorney. It is very pro-consumer.

□ 2000

Second, because this amendment strongly encourages realistic early offers from defendants, injured parties would be compensated much quicker.

Third, defendants also will save, again because this proposal cuts down substantial and protracted lengthy disputes.

Finally, the proposal reduces frivolous lawsuits because it modifies some of the hit-the-lottery type temptations that exist for plaintiff's lawyers today, and it does all of this without in any

way restricting access to the courts for anyone.

Here is how it works. A plaintiff seeking damages in a tort case would notify each defendant of the claim. The defendant would then have up to 60 days to make a settlement offer. If this early offer is accepted, the plaintiff's lawyer, having done whatever work was involved, would be limited to his or her hourly fees. If on the other hand the early offer was rejected, the plaintiff's lawyer could collect a percentage contingent fee but only to the extent that any eventual recovery exceeds the rejected offer.

The basic idea is to induce defendants to make realistic early settlement offers with the assurance that the plaintiff knows he will get most of the money in all of those cases where the defendant eventually expects to be held responsible and go give plaintiffs and their lawyers incentives to accept these early offers unless they are convinced they can win substantially higher amounts through litigation.

The net result is to increase plaintiffs' net recoveries while slashing both sides' legal fees.

The contingent fee agreement has a long and somewhat tortured place in American legal history. Many lawyers and legal scholars have been troubled by it. Their discomfort mainly centers around the tension that exists between the clear benefit of contingent fees which allows greater access to the courts for low- and middle-income individuals on the one hand and the obvious potential for exploitation and abuse of unsophisticated clients in cases where there is no question of liability.

Bar associations and the courts have struggled to ensure fairness in contingent fee systems by either setting caps or sliding scales as has been done in States such as Florida, Illinois, New Jersey, California, and New York, or by purporting to flatly bar the use of contingent fees in certain classes of cases where the risks of client nonrecovery are negligible.

For example, the Virginia State Bar Association in a 1992 ethics opinion barred contingent fees in claims against Virginia's form of nonfault or no-fault automobile insurance contracts, saying one purpose of a contingent fee arrangement is to encourage a lawyer to accept a case which carries inherent risks of nonpayment of legal fees. Conversely, matters which carry no such risk to the lawyer are not usually matters in which a contingent fee arrangement is appropriate.

Or as was stated in a typical State court decision, where the risk of uncertainty of recovery is low, it would be the rare case where the attorney could properly resort to a contingent fee.

Unfortunately, these ethical pronouncements notwithstanding, the fact is that contingent fee arrangements are practically the exclusive method of

compensating lawyers in personal injury cases, which is why this amendment is such an attractive solution. It is based on a proposal coauthored by Michael Horowitz of the Hudson Institute; Lester Brickman, a law professor at Cardozo School of Law; and Jeffrey O'Connell, professor of law at the University of Virginia. It has the enthusiastic support of an extraordinary and exceptional group of lawyers and legal scholars, including Derek Bok, former dean of Harvard Law School; Norman Dorsen, the former president of the American Civil Liberties Union; former Federal judge Robert Bork; Bob Pitofsky, soon-to-be Chairman of the Federal Trade Commission; and former Attorney General under President Bush, William Barr.

The fact is that there is a massive gap between legal ethical rules and legal ethical reality. What this amendment does is find a way to begin to close that gap.

AMENDMENT OFFERED BY MR. CONYERS TO THE  
AMENDMENT OFFERED BY MR. HOKE.

Mr. CONYERS. Mr. Chairman, I offer a perfecting amendment to the amendment.

The CHAIRMAN. Does the gentleman insist upon his point of order?

Mr. CONYERS. No, I do not. I withdraw the point of order; Mr. Chairman.

The CHAIRMAN. The gentleman withdraws his point of order. The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. CONYERS to the amendment offered by Mr. HOKE:

Page 1, line 8, strike "plaintiff" and insert "party".

Page 1, line 10, strike "that" and insert "a".

Page 2, lines 3, 13, and 17, strike "plaintiff" and insert "party".

Mr. CONYERS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment to the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Chairman, the gentleman from Ohio's amendment presents a number of important and potentially troubling issues. Most significant, it avoids even the semblance of evenhandedness by only limiting the fees plaintiff's attorneys could receive. What about the defendant counsel's fees? What about making this apply to plaintiff's attorneys as well as defense attorneys?

The amendment creates a new set of controls on lawyers. It discards our Nation's long-cherished notion of freedom of contract, and instead imposes a set of Government-controlled fee schedules. I think this is 100 percent at odds with the free market beliefs of many of my friends on the other side of the aisle.

The gentleman from Ohio's amendment would also create a potentially significant conflict of interest before

the attorney and his client. It would also discourage settlements, because attorneys could not receive the fee that he or she had bargained for if the case settles.

Perhaps the most serious problem is that the Hoke amendment would limit a plaintiff's right to pay his attorney while imposing no similar limitation on the defendant's right to pay his attorney. As a result, this perfecting amendment would specify that defense counsel are subject to the same limitations as are imposed on plaintiff's counsel. My perfecting amendment would specify that defense counsel are subject to the same limitations as are the plaintiff's counsel.

Would the gentleman consider accepting the amendment?

Mr. HOKE. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Ohio.

Mr. HOKE. Basically what you are saying is that it would apply when a defense counsel is contracting with his or her client pursuant to a contingent fee arrangement; is that correct?

Mr. CONYERS. Well, there are contingent fees, but there are other ways that a defense counsel can be reimbursed as the gentleman knows. For example, when a case settles, there can be a bonus or some kind of contractual stipulation for increased remuneration.

Mr. HOKE. My amendment specifically deals with cases of early offers of settlement in contingent fee cases. To the extent that defense counsels have entered into contingent fee arrangements with their clients, I cannot see that it would be a problem. But I think that the number of cases where that would apply would be extraordinarily rare. Perhaps you are contemplating something else.

Mr. CONYERS. May I respond to my colleague on the Committee on the Judiciary by saying that there are relatively rare instances where a defense counsel is paid on a contingency basis except that the way that they are paid is contingent upon an outcome as well. So in the larger sense, I want to just make sure that we have everybody wearing the same restriction, to the extent that that is possible.

By the way, I want to commend the gentleman, I understand that civil rights litigation is excluded from this provision. I think that is a very thoughtful provision. I would hope that the gentleman would accept this perfecting amendment.

Mr. ZIMMER. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from New Jersey.

Mr. ZIMMER. This amendment assumes that the plaintiff gets the recovery and the plaintiff's attorney gets a piece of the action. Your amendment to the amendment would anticipate a situation where the defendant in fact would have a recovery? Or are you going to measure the defendant's law-

yer's fee in terms of the recovery received by the plaintiff?

Mr. CONYERS. No, I did not mean to complicate the relationship of the defendant with his client. His recovery would be in a sense, even if it is hourly, which is frequently the case for defense counsel, it would be contingent on the number of hours that he worked. It would be contingent on what part of the trial the case was settled in.

All I was doing was just letting what fits the goose fit the gander as well.

Mr. HOKE. If the gentleman would yield, I am assuming that this also will perfect the amendment in such a way that you will be wanting to give it your unqualified support and in that spirit, I certainly accept the gentleman's perfecting amendment.

Mr. CONYERS. Yes, I would be delighted to support this amendment. I thank the gentleman for accepting it.

The CHAIRMAN. Is there further discussion on the amendment offered by the gentleman from Michigan [Mr. CONYERS]?

PARLIAMENTARY INQUIRY

Mr. BRYANT of Texas. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. BRYANT of Texas. Mr. Chairman, is it the case that the Conyers amendment to the Hoke amendment has already been accepted, or is that not the case?

The CHAIRMAN. No, it still has to be voted upon.

Is there further discussion on the Conyers amendment?

Mr. MOORHEAD. Mr. Chairman, I rise in opposition to the Conyers amendment.

I believe that the amendment that is being offered is making a bad amendment worse. I do not see how you can possibly limit the amount of money that can be paid to a defendant's attorney in a case. We are getting into price controls for counsel. H.R. 988 does not deal with the capping of lawyer's fees, it deals with who pays attorney's fees, it deals with the quality of scientific testimony that can be introduced during a trial, and it deals with a lawyer's misconduct in the filing of frivolous claims.

Section 3 of H.R. 988 would make expert testimony inadmissible if the witness is entitled to receive any compensation contingent on the outcome of the case. The reason for this is that an expert witness who received a contingency fee is thus less likely to furnish reliable testimony than one who receives a flat or hourly fee since he or she has a vested interest in the outcome of the litigation.

All of this was in the Contract With America. A cap on lawyer fees was not a part of that contract. The Contract as we have heard from the debate so far is having a difficult time at least on the other side of the aisle traveling through Congress as it is, and to add this very controversial baggage would

make it almost impossible to get to final passage.

Much more work needs to be done on the original amendment before this committee recommends it to the House. Certainly I do not recommend the perfecting amendment that has been offered by the gentleman from Michigan [Mr. CONYERS].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS] to the amendment offered by the gentleman from Ohio [Mr. HOKE].

The amendment to the amendment was rejected.

Mr. BRYANT of Texas. Mr. Chairman, I rise in opposition to the Hoke amendment.

Mr. Chairman, the Hoke amendment to some extent places really in, I think, very stark relief what we are doing with this bill and with the bills that are to follow.

First, we are in the process of rewriting the rules in such a way that no no plaintiff can afford to bring a case because under the bill pending before the House at the present time, the result would be that they would lose their life savings, they would lose everything they had ever had, ever saved, ever earned for them or their children if somebody on the jury did not like the color of their skin or the way they parted their hair.

□ 2015

So they are making it impossible for anyone to bring the case.

The subsequent bills that are going to come up behind this one are going to rewrite the rules so even if you bring it, you have no hope of winning the case because these bills are going to rewrite all of the rules in such a way that the middle-class person who comes forward with it cannot have any chance whatsoever of winning the case, because all of the standards are going to be rewritten.

But the Hoke amendment now goes one step further. It says you no longer can even really hire a lawyer because now you are going to be saddled with a new, untested, untried and untested system of compensating a lawyer. Now when a middle-class person has to hire a lawyer for a case and he has no money, he cannot contract to pay a huge hourly fee, he has to sign a contingency fee contract, and the harder the case is to win, the more likely the victory, obviously the higher the contingency fee will be. That is all that he has to bargain with.

The gentleman from Ohio [Mr. HOKE] removes the ability of the plaintiff to be flexible in negotiating with his lawyer to try to induce the lawyer to take his case. I submit that the last thing we need to do is either under the Contract With America or under our tried and true principles of capitalism and free marketing rights in this country or under our hoped for priority of letting average people get into the courthouse represented by a fine lawyer, that we should not be voting for the

Hoke amendment today. I urge Members to vote no and to turn away an effort to interfere with the right of people to contract a person they would like to have come to work for them to pursue a case.

Mr. ARMEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Hoke contingency fee reform amendment to H.R. 988, the Attorney Accountability Act.

This amendment goes a long way toward getting to the root of our litigation crisis. Thirty-one percent of all Americans regard lawyers as less honest than the average citizen. Among those who have actually used a lawyer, less than half believe they were charged a reasonable fee.

Much of this sentiment is attributable to the contingency fee arrangement. Plaintiffs' lawyers working on contingent fees often receive a large amount of money for very little work when the defendant offers to settle immediately for an ample sum.

While contingency fee arrangements were originally designed for cases where there was not a clear indication of fault, they are now practically the exclusive method of compensating attorneys in personal injury cases: As witness the attorneys' ads on your late night television shows.

Let me give one example of this. In 1989, a delivery truck smashed into a school bus in my own State of Texas 21 children. There was never any question of liability. The only question was how much the families of the victims would receive. After a few months of negotiations, the families settled for about \$122 million. For a few hours' work, a handful of lawyers carved up a \$40 million-plus fee, about a \$25,000 hourly rate.

Mr. Chairman, that is why the Hoke amendment is so important. It means that in those cases in which a defendant expects to be held liable and to pay, the plaintiff, not the plaintiff's lawyer, will receive much more of the award.

This amendment merely puts into Federal law that which is already into the ethical rules, but universally ignored by all of the States.

I strongly urge my colleagues to support this amendment.

Mr. ZIMMER. Mr. Chairman, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from New Jersey.

Mr. ZIMMER. Mr. Chairman, I thank the gentleman for yielding and for creating this A to Z statement.

Mr. Chairman, I rise in support of the Hoke contingency fee reform amendment to H.R. 988. I believe that whether or not Members agree with the concept of loser pays, or whether or not they agree with a monetary cap on damages, this is an elegant way to deal with an important problem in the law. It encourages both plaintiffs and defendants to settle disputes quickly, and it eliminates the awarding of out-

rageously inflated fees where they are not earned, that is, when there is no dispute about liability.

But it does so in a way that places no restrictions on access to the courts. Indigent, low-income and middle-income individuals will still have unlimited access to the courts through a contingency fee arrangement, and they will only pay their lawyer's hourly rate when the case settles quickly. Thus there is plenty of incentive to settle early for both plaintiffs and defendants.

Under this amendment, everyone wins, except maybe the lawyers, and frankly the lawyers win too because this amendment goes a long way to restoring fairness to the way the contingencies are handled, and that will go a long way to restoring the public's confidence in lawyers and the courts, the lack of which my colleague from Texas has referred to.

That is probably why so many highly regarded lawyers and judges and law professors and legal scholars have lined up behind this reform. From Derek Bok, former president of Harvard University and dean of Harvard Law School to Judge Robert Bork one of our country's most distinguished legal scholars; from William Barr, Attorney General in the Bush administration, to Robert Pitofsky, soon to be chairman of the Federal Trade Commission under the Clinton administration. They all know that confidence in our legal system, and ultimately that means confidence in lawyers, is essential to our form of government. And they have all written in support of the idea that lawyers have an ethical obligation to solicit early offers and not charge contingent fees against such offers.

In fact, what the Hoke amendment really does is put into Federal law that which is already in the ethical rules of all of the States but is universally ignored.

I strongly urge support of this amendment.

Mr. ARMEY. I thank the gentleman.

Mr. Chairman, I would like to make a final observation before I surrender my time.

Mr. Chairman, I am not a lawyer, but I profoundly believe that the practice of law is an honorable profession and that the vast majority of the people who practice law in America are honorable people.

However, it is the excesses so publicly displayed, so crassly displayed of the contingency fee plaintiff lawyers that has given the law profession such a terrible reputation. And I support this amendment on behalf of the plaintiffs and the legal profession.

The CHAIRMAN. The time of the gentleman from Texas [Mr. ARMEY] has expired.

Mr. BRYANT of Texas. Mr. Chairman, I ask unanimous consent that the gentleman from Texas [Mr. ARMEY] have 2 more minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. ARMEY. Mr. Chairman, I object. The CHAIRMAN. Objection is heard.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, this is the final insult upon those who may depend on attorneys with contingency fees, who may not be able to afford an attorney, and we are now saying that somehow we have got to regulate the relationship between a plaintiff and his or her attorney. We are now into wage and price controls. What we are trying to do now is unilaterally tell plaintiffs that we are now going to have not through the rules of procedure that control the conference, the judicial conference, the Supreme Court where these kind of rules normally travel and then come to the Congress for disposition, we are now ruling on the floor how we are going to deal with these kinds of questions. And I think that this is a very, very discouraging circumstance for plaintiffs' attorneys to now be prescribed what they will get regardless of what the contract between the plaintiff and his attorney may be.

Mr. BRYANT of Texas. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Texas.

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding. I regret very much that the majority leader came down here and read a statement and then walked off. I got him more time so that he could yield to me so that I could examine the anecdote but he said he would not take the time, and he walked off the floor. What he did was a tried and true method that has been used by the proponents of this amendment. They stand up here, and they talk about an anecdote, and before you can ask them any questions about the anecdote they disappear.

The fact of the matter is the gentleman was talking about a very well known, highly publicized lawsuit in Texas in which many children lost their lives, and fortunately, because they were poor children, had very poor parents, using the contingency system they were able to hire the best lawyers in the State of Texas, and they got a big settlement, which is what was supposed to happen.

The gentleman talked about how they only worked for a few hours, and he has no idea how many hours, the attorneys did work or how much work they did for the fee, although he could find it out if he would to to the records, and if he really wanted to he could go to the case file, or have one of his assistants go to the case file, or have the tort reform group or somebody go to the case file and find out how many hours were really worked in this case and find out what was really done. We will never know what the

truth of that is in that anecdote, nor do we ever seem to ever get to the bottom of any of the other anecdotes.

The fact of the matter is that the contingency fee has been studied and studied and studied, and the advocates of this had an adequate opportunity to ask for hearings on this question. We had no hearings on the question of contingency fees. And they had an adequate opportunity to bring forth studies that will tell us something about the effect of contingency fees, but they come up here at the last minute and say not only are we not going to let you file a case, not only are we not going to let you win a case, we are not even going to let you hire a lawyer. That is the bottom line of the Hoke amendment, and I strongly urge Members to vote against the Hoke amendment.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I just would point out, listening to the debate one would think that there was a requirement of plaintiffs to hire lawyers only with a contingency fee. You can hire lawyers on an hourly fee if you want to pay it. The plaintiff makes that choice.

The plaintiffs are not complaining about their right to use a contingency fee or an hourly rate. Innocent defendants are not complaining because a contingency fee means those lawyers are not going to get paid at all. The only ones who are complaining are the defendants who are guilty of what they are charged.

Ms. JACKSON-LEE. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Texas.

Ms. JACKSON-LEE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, let me provide just another spin or another look-see at this particular amendment, because I think certainly the gentleman from Ohio [Mr. HOKE], has good intentions. But allow me to raise an issue, if you would.

My city of Houston, and I come with deep experience serving as a council member dealing with litigation against the city, we retained an attorney on a contingency fee basis, saving firsthand taxes to the citizens of Houston, and that contingency fee relationship resulted in a multimillion-dollar settlement or result for the city of Houston and the citizens of Houston.

I think when we label contingency fees as negative across the board, we fail to realize the value of such resources for a myriad of litigants, including a local government.

Mr. WYNN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to ask the sponsor a question if he would be willing to respond.

Mr. Chairman, if there is no settlement in the first 2 months, what occurs?

Mr. HOKE. Mr. Chairman, will the gentleman yield?

Mr. WYNN. I yield to the gentleman from Ohio.

Mr. HOKE. Mr. Chairman, the contingency fee then occurs. I wanted to say something in regard to that.

Mr. WYNN. That is fine, Mr. Chairman. Reclaiming my time, that is the point I wanted to make, that in one instance, according to the answer provided by the sponsor, nothing would occur because if the offer is rejected the attorney would simply proceed on a contingency fee basis as is current practice.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. WYNN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding. It is actually worse than he described, because what happens is the contingent fee is limited to only the additional amount that is added to the case when a final verdict comes in.

Mr. WYNN. Reclaiming my time, that is bad. But what he just said may be even worse if he is in fact correct, because the attorney would just reject a settlement offer, therefore putting into effect a contingency fee.

I want to make a couple of other quick points. Mr. Chairman, the point is this, the contingency fees are being portrayed as the villain of the legal system. That is emphatically not true. The contingency fees are a mechanism by which the average America, the person that the Republicans love to cite, gets access to the judicial system. Without contingency fees the fact is a lot of cases would not be brought.

I want to tell my colleagues something else. Without contingency fees, we do not have a control on frivolous lawsuits, because contingency fees are in fact the initial screening mechanism, and as an attorney I can tell you that if a case comes in that is frivolous, I am not going to take it on a contingency basis because in all probability I will lose. So a lot of cases that would otherwise be brought are in fact not brought because the initial attorney says this case is a bad case.

Let me point out in the second instance this bill does not stop contingency fees. As the gentleman from Virginia [Mr. GOODLATTE], I believe, indicated, after the 10 percent you are still able to collect a contingency fee. So let us suggest that you are offered in a \$100,000 case a \$10,000 settlement. You reject the settlement offer. You then win \$100,000. You collect a contingency of \$30,000.

□ 2030

I think contingency fees are good. If my colleagues think it is bad, certainly this amendment will not prohibit it.

I suggest that we reject the amendment offered by the gentleman from Ohio [Mr. HOKE].

Mr. HYDE. Mr. Chairman, I move to strike the requisite number of words.

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

Mr. HYDE. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Ohio [Mr. HOKE].

Mr. Chairman, this is the week to bash lawyers, and next week it is the week to bash politicians, and frankly, as one of each, I feel beleaguered.

I want to say a kind word for contingency fees.

I say to my colleagues, They are the way poor people get access to darn good lawyers, and you don't just walk into a lawyer's office, and he says, "Sign the contract." There may be investigations. In fact, if the lawyer is worth his salt, he'll have to hire and send out investigators to get statements from witnesses, pictures of intersections, hospital records, the police report. There is a lot of work, there is a lot of expense, involved, and the lawyer does that on the if come. Maybe he'll collect it, and maybe he won't, but he has every incentive to work hard to maximize the settlement because his contingency fee depends on that. But people who cannot afford an hourly rate, people who have cases where the injury is bad but the liability is thin, all sorts of situations arise, but you get access to good lawyers in the contingency arrangement.

Now we get excited about how many hours were spent on this case. They tell a great story about the bank that opened up one morning, and they could not get the vault door open, and they called the locksmith. It took him about 6 minutes, and he sent them a bill for about \$2,000, and the bank president said, You only spent 6 minutes.

He said, Yeah, but I went to school for 6 years to learn what to do.

Many times a lawyer spends very little time, but because this lawyer has a great reputation in this field, the insurance company gets sensitized to the fact that it is cheaper to settle at a fair figure than to horse around and get clobbered later on.

So I just suggest I know the gentleman from Ohio [Mr. HOKE], who is one of the most useful members of our committee, he has an idea here that has some merit to it because contingency fees can be abused, clients can be abused, judges can be abusive, all kinds of wrong things can happen, but in the grand scheme of things a poor person can retain a very good lawyer on a contingency fee basis, and the client will make a good settlement; the lawyer, it is worth his while, and justice is served.

So, Mr. Chairman, with deep regret I must oppose the amendment offered by the gentleman from Ohio [Mr. HOKE] and say a kind word for those good law-

yers that I have encountered in my lifetime.

Mr. COX of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think we can all agree that there are meritorious arguments on both sides of this debate. But it is interesting to note, having weighed the arguments on both sides, who agrees that the gentleman from Ohio [Mr. HOKE] is offering a sound amendment, that Mr. HOKE has a good idea.

I confess that I am myself a recovering lawyer. I practiced for about 10 years before I came to the Congress, and I was trained in Harvard Law School. The president of Harvard, Derrick Bok, is in favor of this amendment. Harvard is not a conservative place as far as I know. I had a teacher there whose name is Petovsky. He is about to be nominated and confirmed by the Senate to be Bill Clinton's head of the FTC, and Professor Petovsky thinks this is a good idea.

The head of the ACLU, last time I checked a left wing organization, thinks this is a good idea. ACLU president Norman Dorsen has endorsed the idea behind the amendment offered by the gentleman from Ohio [Mr. HOKE].

Now, whenever the head of ACLU and Judge Bork agree, Mr. Chairman, I think we ought to take a look and find out why it is that they think this is a good idea, and it turns out that this is not at all an attack on contingency fees, which just about everybody that I just named thinks ought to remain as part of our legal system. Rather it is an attack, and I will be delighted to yield in just a moment, as soon as I make my few points—rather this is an attack on the use of the contingency fee arrangement when there is not any real contingency. It is thought to be in, I believe, all 50 States under the bar rules a matter of ethics that you should not try and seek to obtain a contingency fee when they, the lawyer, know that there is really no authentic risk, and the Hoke amendment gets to that very point in a very useful way. He says, if somebody, 60 days after the start of the dispute, offers to settle the case for a particular amount of money, that that amount of money is no longer a contingency because they get that if they settle.

Now it was said, If you reject that settlement and go on and only get a contingency fee on the amount in excess of the settlement, that that is somehow unfair, and I agree that is unfair, but the amendment, as offered by the gentleman from Ohio [Mr. HOKE] does not limit the lawyer to a contingency on what is really at risk. It also gives him, on top of that, 100 percent of his reasonable hourly rate, which is agreed upon objectively. In that circumstance I think we should all agree that it is consumers who are being protected.

I say to my colleagues, "When you go to the garage, and you ask the me-

chanic if there is something wrong with your transmission, you depend rather heavily on that garage mechanic to tell you the truth." That is why, in fact, we regulate that industry for the benefit of the consumers, so that consumers do not get ripped off because they, frankly, do not know what is going on in the drive train under the hood nine times out of ten. They are experts at some other part of life.

Likewise, Mr. Chairman, the lawyer is in a unique position to assess the contingency, and the client is taking the lawyer's word for it. If it turns out there is nothing at risk, which is clearly the case if the other side in 60 days offered to pay that full amount of money, is it not unfair to collect a contingency fee against it? The contingency fee runs 30 to 40 percent, sometimes higher, if it is not limited, of the settlement amount or of the eventual verdict. That is taking away from the consumer the amount that the court or the jury has just awarded to him. It is grossly unfair.

Ultimately two things are at stake here, ethics and consumer protection. It is consumers that we are supposed to be protecting here, and it is the ethics of the profession, in my view, in need of some ethical regulation that this amendment would get after.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. COX of California. I yield to the gentleman from Michigan.

Mr. CONYERS. I say to the gentleman, "Mr. Cox, this issue didn't come up before our Committee on the Judiciary, and if there are as many good arguments as you suggest there are, couldn't we take this back? Chairman HYDE would be, I'm sure, willing to hold hearings on it. But here we are regulating an incredibly important matter, normally one that's left to the Judicial Conference, and the Supreme Court, and then to the Congress, and here tonight late, rather late in hour, we're going to just decide to alter this subject matter."

Mr. Chairman, I would hope that we can send it, if we reject the amendment, we can send it back to—

The CHAIRMAN. The time of the gentleman from California [Mr. COX] has expired.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this amendment. I do so with some reluctance because I appreciate the gentleman's efforts, but I think that this is pure and simple price controls, and the problem with price controls is this:

"Whenever you have them, there are all kinds of unintended consequences that emanate from those price controls. For example, what happens to the defendant in a case where because the insurance company representing the defendant, let's say it's a doctor accused of medical malpractice wants to go ahead and settle the case in the 60-

day time period to take advantage of this early offer mechanism, and the doctor said, 'I don't want any offer made at all because I didn't commit malpractice. I wanted to have my day in court.'"

Mr. Chairman, I would ask the gentleman from Ohio what does that doctor do when that insurance company sends him a letter advising him that he is not negotiating in good faith and that, if he does not accept the offer, he will be responsible for any additional amounts that are recovered?

The same thing happens on the plaintiff's side. What happens when the plaintiff turns down the settlement offer, and he wants to go on to court, but his attorney said, "Well, the original contingency fee will justify the cost, but now the case is only worth an additional \$25,000 above the \$50,000 offered. I don't think he should go ahead."

He says, "I don't care. I want to go ahead with the case."

The attorney does not want to go ahead.

What happens in the case of fraud where you have an incentive now for people to go out and create an accident by running in front of a vehicle, getting it in, making that early—making the demand upon the defendant, and the insurance company has 60 days to rush in and make a settlement.

This is going to encourage all kinds of behavior that does not make sense. It will encourage fraud. It will encourage poor representation of clients. It will drive a wedge between plaintiffs and their attorneys. It will drive a wedge between defendants and their insurance companies.

I believe that there is also a problem here in that the matter does not require that the defendant admit liability when they make this offer so that when the defendant makes the offer and the plaintiff turns it down because he low-balls it, the result of the thing is that then the plaintiff's attorney will have a limited contingent fees only on the amount they improve the case, but the plaintiff's attorney still has to not just improve the value of the case and the damages and get a contingency fee on that, but also has to prove liability, and that is where the contingency is founded. It is founded on the principle that you take a risk. Some cases you prove liability. Some cases you won't. Just because the defendant makes a settlement offer and does not concede liability does not mean there is not a risk of proving liability in the case.

Finally, the provisions of this amendment are flawed in this respect. It says 60 days after the date of the initial contact by the plaintiff. Well, at that point most cases have not been filed in court. The initial demand is made before suit is filed, and we do not know whether this was in State court or Federal court as to whether or not this provision would even apply.

Mr. BARRETT of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Wisconsin.

Mr. BARRETT of Wisconsin. I would like to follow up very quickly on what the gentleman is saying. By the language of this amendment, Mr. Chairman, the 60 days begins to run on the first contact between the plaintiff's attorney and the insurance company, but the bill itself, the amendment itself, does not kick in until there is a Federal diversity suit. There is not going to be a Federal diversity suit until an action is filed, so we are going to have the unusual effect of the plaintiff's attorney making the demand, waiting 60 days. There is no lawsuit. It does not kick in.

By its own terms, Mr. Chairman, this amendment does not work, it does not fit together, because it will not kick in until after the plaintiff's attorney waits the 60 days.

Mr. GOODLATTE. The gentleman is correct.

While the idea underlying this has a good purpose of attempting to encourage settlement, it is an unfair situation to impose upon the parties to lawsuits because of the fact that it has many unintended consequences and, finally, because of the fact that, when an attorney has somebody walk in the door, they do not know whether it is a good case or not. They have to conduct a lot of investigation in these cases, and, when they do that, they never get compensated for the cases that do not have any merit. They are taking a risk in practicing that type of law, and I think that we want the people to take risks. This is counter to the purpose of the loser pays amendment in that respect, but it is separate and apart.

I would not say it does anything to loser pays. It creates a separate mechanism, but one that, I think, is fraught with a lot of unintended consequences, and I would urge my colleagues to vote against it.

□ 2045

Mr. BONO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I stand here in support of the amendment.

Mr. Chairman, I yield to the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I appreciate the words of my friend from Virginia, but I have to say three things and then ask for a vote.

No. 1, this does not eliminate contingent fees. It does not restrict access to the courts. In fact, it maintains or increases it. And it does not in any way restrict attorneys compensation for the time that they put in. What it does do is it merely says that lawyers will be paid their hourly rate where there is no question of liability, where there is an early offer on settlement between the two parties.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. HOKE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HOKE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 71, noes 347, not voting 16, as follows:

[Roll No 203]

AYES—71

Allard	Flanagan	Paxon
Armey	Gunderson	Petri
Baker (CA)	Gutknecht	Pombo
Ballenger	Hancock	Riggs
Barton	Hayworth	Rohrabacher
Bereuter	Hefley	Royce
Bilbray	Heger	Salmon
Boehner	Hoke	Saxton
Bonilla	Horn	Scarborough
Bono	Inglis	Schaefer
Brownback	Jacobs	Shadegg
Bryant (TN)	Kelly	Shays
Burr	Kolbe	Smith (WA)
Christensen	Lewis (KY)	Solomon
Chrysler	Lightfoot	Stenholm
Coburn	Martinez	Stockman
Collins (GA)	McHugh	Stump
Combest	McInnis	Tate
Cox	McIntosh	Taylor (NC)
Cremeans	Metcalfe	Thornberry
Cubin	Mica	Walker
DeLay	Myrick	Zeliff
Dornan	Norwood	Zimmer
Dunn	Parker	

NOES—347

Abercrombie	Cramer	Ganske
Ackerman	Crane	Gejdenson
Andrews	Crapo	Gekas
Archer	Cunningham	Gephardt
Bachus	Danner	Geren
Baessler	Davis	Gilchrest
Baker (LA)	de la Garza	Gillmor
Baldacci	Deal	Gilman
Barcia	DeFazio	Gonzalez
Barr	DeLauro	Goodlatte
Barrett (NE)	Dellums	Goodling
Barrett (WI)	Deutsch	Gordon
Bartlett	Diaz-Balart	Goss
Bass	Dickey	Graham
Bateman	Dingell	Green
Beilenson	Dixon	Greenwood
Bentsen	Doggett	Gutierrez
Berman	Dooley	Hall (OH)
Bevill	Doolittle	Hall (TX)
Bilirakis	Doyle	Hamilton
Bishop	Dreier	Harman
Bliley	Duncan	Hastert
Blute	Durbin	Hastings (FL)
Boehlert	Edwards	Hastings (WA)
Bonior	Ehlers	Hayes
Borski	Ehrlich	Heineman
Boucher	Emerson	Hilleary
Brewster	Engel	Hilliard
Browder	English	Hinches
Brown (CA)	Ensign	Hobson
Brown (FL)	Eshoo	Hoekstra
Brown (OH)	Evans	Holden
Bryant (TX)	Everett	Hostettler
Bunn	Ewing	Houghton
Burton	Farr	Hoyer
Buyer	Fattah	Hunter
Callahan	Fawell	Hutchinson
Calvert	Fazio	Hyde
Camp	Fields (LA)	Istook
Canady	Fields (TX)	Jackson-Lee
Cardin	Filner	Jefferson
Castle	Flake	Johnson (CT)
Chabot	Foglietta	Johnson (SD)
Chambliss	Foley	Johnson, E. B.
Chenoweth	Forbes	Johnson, Sam
Clay	Ford	Johnston
Clayton	Fowler	Jones
Clement	Fox	Kanjorski
Clinger	Frank (MA)	Kaptur
Clyburn	Franks (CT)	Kasich
Coble	Franks (NJ)	Kennedy (MA)
Collins (IL)	Frelinghuysen	Kennedy (RI)
Collins (MI)	Frisa	Kennelly
Conyers	Frost	Kildee
Cooley	Funderburk	Kim
Costello	Furse	King
Coyne	Gallegly	Kingston

Klecza	Nadler	Skeen
Klink	Neal	Skelton
Klug	Nethercutt	Slaughter
Knollenberg	Neumann	Smith (MI)
LaFalce	Ney	Smith (NJ)
LaHood	Nussle	Smith (TX)
Lantos	Oberstar	Souder
Largent	Obey	Spence
Latham	Olver	Spratt
LaTourette	Ortiz	Stearns
Laughlin	Orton	Stokes
Lazio	Owens	Studds
Leach	Oxley	Stupak
Levin	Packard	Talent
Lewis (CA)	Pallone	Tanner
Lewis (GA)	Pastor	Tauzin
Lincoln	Payne (NJ)	Taylor (MS)
Linder	Payne (VA)	Tejeda
Lipinski	Peterson (FL)	Thomas
Livingston	Peterson (MN)	Thompson
LoBiondo	Pickett	Thornton
Lofgren	Pomeroy	Thurman
Longley	Porter	Tiahrt
Lowey	Portman	Torkildsen
Lucas	Poshard	Torres
Luther	Pryce	Torricelli
Maloney	Quillen	Towns
Manton	Quinn	Traficant
Manzullo	Radanovich	Tucker
Markey	Rahall	Upton
Martini	Ramstad	Velazquez
Mascara	Reed	Vento
Matsui	Regula	Viscosky
McCarthy	Reynolds	Volkmer
McCollum	Richardson	Vucanovich
McCrery	Rivers	Waldholtz
McDermott	Roberts	Walsh
McHale	Roemer	Wamp
McKeon	Rogers	Ward
McKinney	Ros-Lehtinen	Waters
McNulty	Rose	Watts (OK)
Meehan	Roukema	Waxman
Meek	Roybal-Allard	Weldon (FL)
Menendez	Rush	Weldon (PA)
Meyers	Sabo	Weller
Mfume	Sanders	White
Miller (FL)	Sanford	Whitfield
Mineta	Sawyer	Wicker
Minge	Schiff	Williams
Mink	Schroeder	Wilson
Moakley	Schumer	Wise
Molinari	Scott	Wolf
Mollohan	Seastrand	Woolsey
Montgomery	Sensenbrenner	Wyden
Moorhead	Serrano	Wynn
Moran	Shaw	Yates
Morella	Shuster	Young (AK)
Murtha	Sisisky	Young (FL)
Myers	Skaggs	

NOT VOTING—16

Becerra	Gibbons	Rangel
Bunning	Hansen	Roth
Chapman	Hefner	Stark
Coleman	McDade	Watt (NC)
Condit	Miller (CA)	
Dicks	Pelosi	

□ 2104

Messrs. MFUME, KASICH, and BACHUS changed their vote from "aye" to "no."

Messrs. HERGER, HORN, ROHRBACHER, and PAXON changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. MOORHEAD. Mr. Chairman, I move that the Committee do now rise.

The CHAIRMAN. The question is on the motion offered by the gentleman from California [Mr. MOORHEAD].

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. KINGSTON) having assumed the chair, Mr. HOBSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill, (H.R. 988) to reform the Federal civil justice system had come to no resolution thereon.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1058, SECURITIES LITIGATION REFORM ACT

Mr. SOLOMON, from the Committee on Rules, submitted a privileged report (Rept. No. 104-68) on the resolution (H. Res. 105) providing for the consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR CERTAIN COMMITTEES AND SUBCOMMITTEES TO SIT TOMORROW, TUESDAY, MARCH 7, 1995, DURING FIVE-MINUTE RULE

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the five-minute rule: The Committee on Agriculture, the Committee on Banking and Financial Services, the Committee on Economic and Educational Opportunity, the Committee on Government Reform and Oversight, the Committee on National Security, the Committee on Resources, the Committee on Transportation and Infrastructure, the Committee on Veterans' Affairs, and the Select Committee on Intelligence.

Mr. Speaker, it is my understanding that the minority has been consulted and there is no objection to these requests.

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

Mr. WISE. Mr. Speaker, reserving the right to object, the distinguished gentleman from New York [Mr. SOLOMON], Chairman of the Committee on Rules, is correct, the Democratic leadership has been consulted on each of these and there is no objection.

Mr. Speaker, I withdraw my reservation of objection.

Mr. SOLOMON. Mr. Speaker, we thank the gentleman for his being so reasonable.

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

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mrs. MYRICK. Mr. Speaker, I ask unanimous consent that my name be deleted as a cosponsor of that joint resolution, House Joint Resolution 2.

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

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 2

Mr. BROWNBACK. Mr. Speaker, I ask unanimous consent that my name be deleted as a cosponsor of the joint resolution, House Joint Resolution 2.

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

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, 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 Ohio [Ms. KAPTUR] is recognized for 5 minutes.

[Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. OWENS] is recognized for 5 minutes.

[Mr. OWENS 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. WYNN] is recognized for 5 minutes.

[Mr. WYNN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

NOTIFYING MEMBERS OF HISTORIC MEETING ON THURSDAY, MARCH 9, 1995, REGARDING AMERICA'S RENEWED WAR ON DRUGS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from New Hampshire [Mr. ZELIFF] is recognized for 30 minutes as the designee of the majority leader.

Mr. ZELIFF. Mr. Speaker, it is my pleasure to offer this special order tonight on a subject which is of major importance to all of us.

Remember the drug war? Remember when casual use was condemned, not discussed in the same breath as legalization? When the Nation's commitment to interdicting drugs wasn't shrinking? When Presidents and First Ladies spoke out, especially to children, about the dangers of drug use?

Well, I do, and so do many of my friends and colleagues in this Chamber.

That is why, as chairman of the House Oversight Subcommittee on National Security, International Affairs and Criminal Justice, I will be joined by Democrats and Republicans in holding historic hearings on March 9. Our

singular and united purpose: To re-awaken the Nation. To refocus our great Nation on the renewed need for engaged, outspoken national leadership. From the very, very top.

Sadly, there is a growing consensus that our current approach is failing. In 1993 and 1994, respected annual surveys of 51,000 high school students and 8th graders told a depressing story: Gains made are slipping away.

We are in the midst of a major reversal—both in youth use and attitudes.

After a steep drop in monthly cocaine use between 1988 and 1991, from 2.9 to 1.3 million users, and a similar drop in overall drug use between 1991 and 1992 from 14.5 million users to 11.4 million users.

The latest numbers reveal drug use up for all surveyed grades for crack, cocaine, heroin, stimulants, LSD, non-LSD hallucinogens, inhalants, and marijuana.

For example, in 1994, according to the respected Michigan University study, twice the number of 8th graders were experimenting with marijuana as did in 1991, and daily use of marijuana by seniors was up by half just from 1993.

If that were not enough to show our current failure, the nationally-recognized Drug Abuse Warning Network has just reported that drug-related emergency room visits in 1994 were up 8 percent over 1993, now standing at their highest point ever.

Does this matter? You better believe it does. The Columbia University Center on Addiction and Substance Abuse [CASA], headed by a former Carter Cabinet Secretary, expressed it this way.

If historical trends continue, the jump in marijuana use among America's children from 1992 to 1994 signals that 820,000 more of these children will try cocaine in their lifetime. Of that number, about 58,000 will become regular cocaine addicts and users.

These numbers only scratch the surface. Drugs kills kids. They steal opportunity, crush dreams and ruin lives.

This has not changed, even as their acceptability has crept back. What we need in 1995 is leadership—real leadership—something that has been sadly absent.

Let me be clear. Leadership is needed from both sides of the aisle, and from both ends of Pennsylvania Avenue.

The Nation must again talk about this scourge, educate kids, go after the drug traffickers who have enjoyed freer reign with reduced interdiction. Less money was spent on interdiction in 1994 than in 1993, and less in 1993 than in 1992. We must collectively revive the Nation, restore the momentum, and recognize that this is a war won every day—one child at a time.

That's what Thursday's hearing is for. And we are calling in the leaders in this fight. Our first speaker will be someone who has been working privately on this issue for a decade.

She is flying from her husband's side to deliver what we understand will be her most significant address on this

issue since she addressed the United Nations in 1988.

We will listen intently, because she is a uniquely dedicated leader to drug prevention and the creator of a national foundation to halt drug abuse. We will also listen because she is a former First Lady, Nancy Reagan.

She will be followed by a former Head of the Drug Enforcement Administration under both Presidents Clinton and Bush, Judge Robert Bonner.

□ 2115

At Bonner's side will sit a former Drug Czar, Dr. William Bennett, who promises new thinking and a crisp critique. Both men drive one point home: Presidential leadership is essential, especially in re-finding a commitment to international interdiction. With Bonner and Bennett, John Walters, and other veterans of the drug war, I would also point out the solidarity of purpose represented by the recent article from Joseph Califano, "It's Drugs, Stupid."

We need bi-partisan effort and a bi-partisan call to national leadership. Califano's ideas are not the only ones on point.

We will be joined by a former Coast Guard Commandant, Paul Yost, predecessor to President Clinton's national coordinator for drug interdiction.

We will also hear from President Clinton's Drug Czar, Dr. Lee Brown. Just how has the Nation gotten so far off track? Why has there been so little presidential leadership on drugs?

And from both sides of the aisle: How will President Clinton's 1995 Annual Drug Control Strategy address the 1993 and 1994 slippage? Prevention must not be left out. Teaching and interdicting are both important; they lean upon each other, two sides of a dam restraining the in-flow of illegal drugs.

Major national leaders on prevention will also speak, including the widely-heralded Partnership for a Drug Free America, BEST Foundation, Community Anti-Drug Coalitions of America, and Texans' War on Drugs.

There is only one point: Drugs destroy lives, and our Nation must now remember what President and Nancy Reagan so plainly taught.

You cannot stop drugs without effective drug interdiction. You cannot prevent drug use if you don't talk about it. From the President on down, it's time to seriously look at drugs again. The Nation needs it, and our kids deserve it: We now need renewed national leadership.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. ZELIFF. I yield to the gentleman from New York.

Mr. GILMAN. I want to commend the gentleman for his efforts in the drug war, something we have been fighting for many years. Too often our Nation forgets crucial aspects of how drugs have affected our society, killing our young people, placing many of our people in a nonproductive situation. We cannot say enough about this problem, we cannot do enough about the prob-

lem. I want to commend the gentleman for his efforts.

Mr. ZELIFF. I thank the gentleman from New York and the highly respected chairman of the Committee on International Relations. I know from your vantage point, maybe you can just tell us from your vantage point, from a worldwide global effort what this is doing to our national defense and security.

Mr. GILMAN. It has affected every aspect of our society, not only security which has been hurt by the many drug abusers who are out there, but also industry itself, loss of productivity, absenteeism, the amount of accidents that occur. But most important, how it has impacted upon our young people, the overdose, the deaths, causing many of our young people to leave school and to go out on the street and become drug traffickers rather than to be productive members of our society.

It has been estimated that drug abuse in our country costs over \$500 billion in lost productivity, absenteeism, and all sorts of problems that it causes. We cannot say enough to convince our Nation to get behind our drug war to make certain that our communities are going to be drug-free and that our schools will be drug-free. I hope my colleagues will take a look at the proposal to cut funding for the drug-free school proposal. I think that is an extremely important measure. Prevention is so important.

Those of us who have been fighting the battle recognize there are five major battlefields in the drug war to reduce supply and demand simultaneously, to go to the source countries and eradicate, to interdict when the product comes out of those countries and heads toward our shores, and then to beef up our enforcement when it reaches our shoreline.

Then on the demand side, to provide the kind of education that will discourage abuse by our own youngsters, to teach them that drug abuse is not recreational but is deadly, and then in the final analysis to treat and to rehabilitate the victims of drug abuse. Again I thank the gentleman for focusing his attention on this very important aspect of the drug war.

Mr. ZELIFF. I thank the gentleman from New York.

Mr. EHRLICH. If the gentleman would further yield, I first want to thank the gentleman in a very public way for making me a Vice Chair of the committee. I am very excited. I also congratulate the gentleman with respect to your enthusiasm to tackle this issue head-on, because it occurred to me in the course of the crime debate, and I would like the gentleman to comment on this if he would. We discussed on this floor truth-in-sentencing and the importance of building prisons and mandatory minimum sentences and gun violence and all the very important crime-related bills that have

passed through this floor, but we were criticized because we did not address at that time in my view what is really the threshold issue here, which is the proliferation of drug abuse in this country over the last 20 years, because I know the gentleman agrees with me, name the issue, AIDS, child abuse, truth-in-sentencing, building of prisons, whatever it is, whether it is a fiscal issue or a social issue, most of the issues we deal with on this floor are in some way related to the proliferation of drug abuse in this country today.

I would direct a question to the Chair of the subcommittee and ask you to comment on this observation.

When Mrs. Reagan came out with the "Just Say No" Program, she was criticized, as the gentleman will recall. It just was not cool to just say no. There had to be something more sophisticated, a more complex message that we needed to give to the children of this country.

But the fact is, and I think this goes back to the whole idea really behind the Contract With America and why many of us ran for public office, getting back to this idea of personal responsibility in our individual lives and stressing the fact that our kids make millions of decisions during the course of a day, and the message they need to hear coming from their parents, from their elders, from the floor of this House is, "It's OK to say no, it's cool to say no," because they will pay the price potentially if they make the wrong decision.

I would like the gentleman to comment on the leadership the Reagans, the former First Lady showed in coming out in such a way that she knew she would be in for it. She knew that the Hollywood types and the commentators from Washington would deem her comments almost irrelevant and she would become the focus of actually being made fun of, which she was, but she stuck to her guns and she is going to revisit our subcommittee, I know you are very honored to have her come to our subcommittee and re-stress, reiterate how important this message is today for our kids in 1995.

Mr. ZELIFF. First I am very proud to have the gentleman as my Vice Chair. I think Thursday's meetings are going to be right on point, and I am hoping that with the people we have assembled there, we can draw enough attention to get back on track.

I agree, Nancy Reagan did step out at a time when it was not easy to do that, to take a leadership role, but that is what leadership is all about. She certainly was supported by the President at that point, and people from around the country stepping out. This is what we have to do now. We need to now step back out.

We hope that we can encourage the President to start with his office, the bully pulpit, and start showing the kind of leadership that needs to be shown here, that maybe that will then start both sides of the aisle here, both

sides of Pennsylvania Avenue, we start then speaking out as well.

I think that is what it is going to take. It is going to have to be a national, a top priority, and the priority starts right at the very, very top, with the President. If he shows the kind of leadership that he is capable of showing, then we will all be able to do the same in our individual areas.

But we cannot let this go on. If we accept casual use of drugs, then we are going to accept things, the former Surgeon General was starting to talk about legalization, and we are going downhill from there. I think we have just go to reverse where we have been and start back up where we were back in the days of Nancy Reagan.

Mr. EHRLICH. I really appreciate the gentleman's comments. This is certainly not a partisan issue in any respect, but you were focused on the casual use of drugs, which I think is an element in this whole debate that has been missing in recent times. I would like the gentleman to comment on this number.

Columbia University Center on Addiction And Substance Abuse recently warned, if historical trends continue, the jump in marijuana use among America's children, defined as ages 12 through 18, from 1992 to 1994, signals that 820,000 more of these children will try cocaine in their lifetime. Of that number, about 58,000 kids will become regular cocaine addicts and users.

It seems to me that the White House misses the fact that no one goes from being a nondrug user to a gross abuser. There is a middle ground there. The casual user really needs to be the focal point of our efforts here on the floor of this House. Here again, that is where the former First Lady really deserves credit, because she focused her energies on those casual users, and God knows, if we ignore the casual users, we have major problems down the road.

Mr. ZELIFF. Absolutely. We have got to get to kids early on and stay with them all the way through.

Mr. MICA. Will the gentleman yield?

Mr. ZELIFF. Yes, sir, I yield to the gentleman from Florida, a very valued member of our committee as well.

Mr. MICA. First I want to take just a moment and thank you as chairman of our subcommittee, I have the honor of serving with you.

I know the hour is late, I know that my colleagues are late, the staff is tired, and we have been working very diligently the past weeks to bring issues before the Congress and the American people of utmost importance, but I really cannot think of any subject that is more important to this Congress or to American society than the question of drug and substance abuse.

I want to compliment you, too, taking over as chairman of this subcommittee and immediately dealing with the issue and bringing this issue to the forefront not only of our subcommittee but of the Congress and this

administration and the American people.

If I might just comment a few minutes. As a Member, a new Member of Congress during the 103d session, I had over 130 members of both sides of the aisle, Republican and Democrat, sign a letter asking the former chairman of the House Committee on Government Operations to hold a hearing, a full hearing on the administration's drug policy. Do you know that we never held a true full hearing on the administration's drug policy? The worse the situation got, the more that this was ignored. In fact, it was totally ignored. Again over 130 Members, both sides, Republicans and Democrats, asked for a hearing and never got a hearing. On the very last day, a hearing was held in one of the subcommittees and it was a sham of a hearing.

So I salute you on taking charge of this subcommittee, on bringing this subject forward. Let me say that this is a real, real problem that this country has, and that is drug and substance abuse and that our subcommittee and this Congress must address some of these fundamental issues.

For too long, the other side sent mixed messages. They sent messages as far as the Congress was concerned in the way that drug abuse would be tolerated in this country. We had a Surgeon General of this Nation who did not give the proper emphasis to the problems with casual abuse and drug use that we have heard mentioned here today. It has not been a priority of this administration. I again commend you on making it a priority.

When this Congress can send thousands of American troops into Haiti and we can help solve the problems in Somalia and around the world and when just a few miles from here, Washington, DC, we have in the alleys, in the backyards, in the streets almost every weekend and every night people, their lives being destroyed, young people being destroyed. You know, I have been coming to our Nation's capital for almost 15 years now and every Monday I pick up the paper and it practically brings tears to my eyes and sadness to my heart to read about the young black American, Afro-American males that are being wiped out in our Nation's capital, again just a few blocks from here.

Each year since I have been coming here, it has been between 350 and 450 people whose lives are snuffed out in this fashion.

□ 2130

And somewhere this has to be a priority. Somewhere there has to be a time for this Congress and this Nation to wake up and see that the real problem facing this country, that the biggest social and crime problem is drugs and drug abuse and drug use.

If you come to Florida in my district and you talk to the sheriffs and talk to the enforcement people and you ask them how many people in your prison

or in your jail are here and have been involved in drug abuse or substance abuse, they will tell you 60 percent, 70 percent of the people in prison have been victimized or involved in drug use and abuse.

We have ignored this problem, and we must bring this problem and this administration and this Congress' approach, a new approach, a sound approach.

This administration ignored helping our Andean nations with information, with exchange radar information. I will say that two of the chairs and former ranking member of the Committee on Foreign Relations sat in hearings and saw the mess that was created with our Andean nations, and now we accuse Columbia of not paying attention to drug abuse and interdiction and assistance and enforcement. Yet this Nation has not made it a priority. So we have got to get our house and our policy and our agenda and our priorities in order, and we have got to make drugs and substance abuse enforcement, interdiction, telling our young people this is not an acceptable behavior, telling our young people how it will destroy their lives and make enforcement a real tool rather than an imaginary or illusory tool as has been done under this administration.

So I do want to commend again the gentleman in the well, the chairman for holding these hearings and for coming out late tonight and for giving us an opportunity to tell the Congress and the American people that this is high on our priority agenda. We do not have a Contract With America for the next 100 days, but this is part of the Contract With America now and for this new majority in Congress, and it will be for the days remaining in our tenure in this Congress and now the 104th Congress.

Mr. EHRlich. If the gentleman will yield, I really appreciate listening to his remarks. As the subcommittee chairman knows, I was not here in the 103d Congress. But in reading through the administration's antidrug strategy, I read a provision that really disturbed me. The Clinton drug strategy now seems to deemphasize prevention, saying "Antidrug drug messages have lost their potency."

My question to the gentleman from Florida and to the chairman of the subcommittee is was that a central theme of the hearings that did occur in the 103d Congress? Have we given up?

Mr. MICA. If I may respond to the gentleman, there never was a central theme. There were hit and miss embarrassments, and the only one that I recall that there was any change or attempted change in policy was relating to the Andean policy and the exchange of information.

I remember when the President came to the Summit of the Americas in Miami and we spent about an hour together, almost every Member of Congress who joined our delegation stood up and said, "Mr. President, what is

your policy relating to narcotics control? Mr. President, what is the situation relating to enforcement?" Each time we got different answers from the President and from his advisers, and finally they have begun to respond, only because there is a new majority in the Congress.

Mr. ZELIFF. If the gentleman will yield for just a second, the interesting thing is there has been very little mention about a drug policy at all for the last 2 years. I think this is the crime of the whole thing, we are just now talking about it. We are tolerating it, and that is what we hope these hearings will start to bring out.

Mr. MICA. Under the previous administration, the drug czar, Mr. Martinez from Florida, and Mr. William Bennett, there were no less than two dozen subcommittee hearings and at least two full committee hearings on the policies, and these drug leaders from the administration were hauled before the Congress and asked to comment on specifics of the policy. We have not had that opportunity, but we will have that opportunity. We will find out what the policy is, what the direction of this administration is going to be, and if necessary I will work with the gentleman and with both sides of the aisle to craft a policy that makes some sense so that we bring enforcement, so that we bring real education forward, and that we list this as a national priority, that our children and young people are dying on our streets, that it is the number one cause behind crime in this country, and it has been swept under the table and now something needs to be done about it.

So this is your priority and it is my priority, and it will be the priority of other Members in this 104th Congress.

Mr. ZELIFF. I thank the gentleman for those very wise comments.

I yield to the gentleman from Indiana [Mr. SOUDER], another valued member of our subcommittee, and I look forward to his testimony on Thursday.

Mr. SOUDER. I thank the gentleman for yielding. I imagine that there are a lot of people in a state of shock on hearing about this hearing, because I want to commend the gentleman because of the way this body works and the other body, and I was a legislative director for Senator COATS in 1982 through 1992, and in 1985 to 1993, the top three issues were drugs, drugs and drugs, and anything that looked like a drug bill we shoveled money toward that drug bill, and we tried to address the issue. But much of the way Congress works is once we pass a bill, then we assume that supposedly that the problem has disappeared. We end welfare as we know it, and we fix this, and because Congress focused on it 4 or 5 years ago, the problem was supposed to go away. It does not matter that statistics show that it has grown up. But now the political focus is off, people want to ignore it and put it under the table and focus on something a little

more topical and get more attention, even though the problem is still existing and is increasing.

In the first year in office President Clinton slashed the czar's office from 146 to 25. He put enforcement efforts on the back burner and shifted the emphasis from our borders he says to neighborhoods and streets, yet they have cut back on a lot of those types of efforts. This administration has spent, as we heard earlier, much too much time focusing on the problems in Somalia, or in Haiti, or on micromanaging the rest of the world and they have not paid adequate attention to our crisis here at home.

In Fort Wayne, IN, in my hometown, instead of having 30 or 40 buildings that are used for crack, we now have 150 to 250 that are occasionally used for crack. Our gang problem has increased further. For murders, we see in Fort Wayne that most murders are drug-related, they are kids battling on the streets over control of the drug trade, often coming out of Detroit or out of Chicago. It has not gone down at all.

I think as we look at that we need a clear message from our national leadership that we are going to do whatever we can. We need to use the moral authority of the bully pulpit, of the President. We need clear direction coming out of there. We already heard Joycelyn Elders and her position which was actually, "Don't smoke, but if you have to smoke, don't smoke tobacco." It was a really very mixed message, and we have seen an increase in the T-shirts and in the rock music, and in every store with rock music that you go into you have that marijuana sign, the marijuana drug, an acceptance in the culture, and we need to focus on changing the moral authority and the director of this country. We are clearly seeing a rise in the use of marijuana, the major drug of preference in usage, as well as other types of drugs in this country. The plain truth is that leadership matters. We can put money into education and D.A.R.E., into the school problems which reaches a few people. We can try to put the balloons up in the air. We can try the INS, we can try the faster cigarette boats to try to track people down in the water. We can look through the banana shipment to see if drugs are coming in. We can use different aircraft and try all the different methods for interdiction and we need to, but that alone will not eliminate it. We need to have local task forces to do it. We need to have a focus there. We need to have treatment programs, many of which fail, but we still need to have treatment efforts and make the effort on all of those fronts.

But a lot of this ultimately is going to come down to we just have to say no. That is why it is so important to have Mrs. Reagan coming to give that moral message again, that we have to have the moral authority to change the commitment in the individual lives and in society to say that that is wrong. We cannot tolerate this. We

need to pass that message to our children and to our families to supplement that. Our responsibility as government leaders is to try to use the force of government, but much of this is in the hearts of people, and we have to use our bully pulpit, the President, the Congress, committee hearings like the gentleman is having to put the toughness back in it.

I think the record of this administration is clear, and if they think that they have improved it, they need to exhale.

Mr. ZELIFF. I thank all of my colleagues for joining us tonight. We are having this hearing on Thursday, and it is going to be the most important single issue that I think our country faces. It is one we need to focus great attention on from both sides of the aisle and both ends of Pennsylvania Avenue, and we look forward to these hearings.

#### WHO REALLY CARES ABOUT THE KIDS?

The SPEAKER pro tempore (Mr. KINGSTON). Under the Speaker's announced policy of January 4, 1995, the gentleman from Pennsylvania [Mr. FOX] is recognized for 30 minutes as the majority leader's designee.

Mr. FOX of Pennsylvania. Mr. Speaker, I rise on the issue of nutrition for children.

Mr. Speaker, when Republicans stood on the steps of the Capitol on September 27 last year, we made a contract with the American people. We said that if the people made us the majority party in the House of Representatives we would bring to the floor of the house within 100 days 10 major bills to get America back on track. Our contract will be honored; our word will be kept.

Soon we will consider a bill that will make an end to a welfare state that has failed. The welfare state failed because for too many years Congress equated solutions with one-size-fits-all bureaucratic remedies. And it failed because Congress was afraid to make the tough decisions that must be made if we are going to truly help the beneficiaries of the current welfare system as well as the taxpayers without whom no system of help could be made possible.

However, in our attempts to provide needy children with nutrition programs through block grants we have been susceptible to the disingenuous attacks by the White House and its congressional allies. Listening to the other side, one would have thought the worst: The end of the school lunch program.

The American people deserve better than these scare tactics. We are seeking compassionate solutions to help needy children. We are committed to creating a system that ensures the safety and health of our Nation's children.

The facts are clear and, as usual, the facts tell quite a different story than some congressional Democrats have presented. Spending for school meal programs will actually increase by at least 4.5 percent next year under the Republican proposal and each year thereafter.

Our bill creates a separate school-based nutrition block grant that focuses on school-based nutrition programs such as school lunch and school breakfast. In addition, it creates a separate family nutrition block grant to meet the needs of low-income children and pregnant mothers, provides meals and supplements to children in child care, and allows for the operation of a summer food program to meet the needs of children when they are not in school.

Block grants eliminate the Federal middle-man and allow the governors to design a program that serves their State's families in the most efficient manner, and even saves money on administration. By eliminating the Federal bureaucracy and the 15-percent administrative costs that go with it, they can use these funds to provide more meals for more students.

As we turn power over to the States, much has been said about the strings attached issue. Some governors have asked for block grants from the Federal Government that come with no strings. However, we want to make sure that the programs will be in fact implemented correctly and in the way that we know will serve our children best.

Let me emphasize that nutrition block grants will go directly to fund nutrition programs and nutrition programs only. In turn, States will be responsible for reporting to the Federal Government mathematical statistics every year to ensure their commitment to serving those needs. It is imperative that the nutritional goals are met.

Changing a system as large and as important as welfare will inevitably lead to some disagreements. Nevertheless, when our bill is passed, we believe life in America will be changed for the better. We also believe children will be served better by eliminating the Federal middle-man and the bureaucracy and getting more funds in fact to help our children.

Mr. Speaker, I yield to the gentleman from Oklahoma [Mr. J.C. WATTS].

Mr. WATTS of Oklahoma. Mr. Speaker, I want to spend a few minutes and go down memory lane. I was one of those kids in school who loved school lunches. Back at Jefferson Davis Elementary School in Eufala, OK, they made some of the best school lunches. I used to love the hot dogs, sauerkraut, and mashed potatoes, and those cinnamon rolls were pretty doggone good too. In fact, all of us kids were made to eat lunches and were thankful to have them.

Let me fast forward to 1994. As far as my public service, before I was elected from the Fourth District of Oklahoma,

I served as youth minister at the Baptist Church in Dale City, and on occasion I would go to different junior highs and high schools in the community and eat with the kids in my youth group. Now, for round numbers, let us say 100 kids were supposed to eat in the school lunch room. Only about 50 to 60 of those kids would eat lunch, and most were eating from the fast food outlets in the cafeteria that actually made money for the schools. Now that is a different story. The rest of that food went to waste. A lot of food went to waste.

I do not like waste. I do not know about your house, but in my house growing up J.C. Buddy Watts, Sr. and my mother Helen Watts would never approve of wasting food.

□ 2145

Now I do not know about your house, but in my house growing up J.C. Buddy Watt, Sr., and Helen Watt would never approve of wasting food. Wasting money was even worse.

That is what this school nutrition program is all about, not wasting food and not wasting money.

As my colleagues know, the opening day reforms of this House suggested that government would have to live under the same rules as everyone else. We need to stop the misinformation campaign and scare tactics of those opposed to us and get out the real truth about the school nutrition program. The school nutrition program is saving money and is passing along these savings to the school lunch program.

And here is a real twist. With the Republican nutrition block grants we are actually serving kids the best kinds of lunches, lunches that have budgets cooked up in their own State, lunch budgets that will actually increase 4.5 percent each year for the next 5 years. Let me repeat that, budget increases of 4.5 percent each year for the next 5 years, and lunches that will be healthy and nutritious, maybe even taste as good as what Mrs. Guider and Mrs. Woods would make at my elementary school.

The point is Mrs. Guider and Mrs. Woods, our cafeteria manager, and Mrs. O'Reilly, the principal, and now Governor Keating and his staff in Oklahoma know more about serving their children than bureaucrats in Washington.

This plan sends the school lunch program back to the States where they can administer it best. It creates block grants that eliminate the Federal middleman and reduces paperwork, meaning more lunches can be served with the savings.

As Michigan Governor Engler says, the States can do it better. To quote him:

To suggest that any Governor in any State is ready to abandon children, let them be hungry, throw them out on the street, is absurd.

Anyone who thinks that Uncle Sam knows best how to feed the kids in

Duncan, Lawton, Altus, Frederick or Norman, OK, is literally out to lunch.

Mr. Speaker, this whole debate is not true. The savings alone will allow us to continue to serve those in need and increase the number of children and families receiving services.

We have all heard that there is no such thing as a free lunch. The current program serves up about \$200 million just for administration to provide the \$1.77 worth of free lunch and at least 30 cents in subsidies for all students who pay. If we cut out the middleman, we all gain from the savings.

We need to put the Federal bureaucracy on a diet. The only starvation in this bill is to the fat-laden layers of Federal bureaucracy.

Now let me repeat something. This bill only cuts out the fat of the middleman, the Federal bureaucrat, not school lunches. This bill saves money by sending the money back home to prepare home cooked meals in our own home schools.

The best news yet is we pass along the savings to our kids.

Here are a few more morsels:

There are actually more funds in fiscal year 1996 under the block grant proposals than under the current system. Eighty percent of the funds must be used for meals for low income children, and no more than 2 percent may be used for administrative purposes.

Add up all these tidbits, and I think you find the opposition's dissent is distasteful. We have a full plate when it comes to budgeting in this Congress. The school nutrition block grant programs make sure that our students also have a full plate when it comes to lunchtime.

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the comments of my colleague, the gentleman from Oklahoma [Mr. WATTS]. I think he well points out the fact that under our GOP proposed spending on the school lunch program you will notice in the red column the increase every year goes all the way up to 1995, the year 2000. So obviously there is a dedication here to take a program, and improve it and to make sure that we work hard with it.

At this time, with permission, Mr. Speaker, I yield to the gentleman from North Carolina [Mrs. MYRICK].

Mrs. MYRICK. Mr. Speaker, funding for the nutrition programs under the GOP plan is greater in each of the next 5 years than under the current system, a 4.5 percent increase each year or \$19 billion 795 million, which is \$588 million more than would be provided under the current system.

Mr. Speaker, our needy children will not be left behind. All program dollars in family nutrition block grants are required to go to individuals below 185 percent of the poverty level. With increased funding, less bureaucracy and less paperwork, Mr. Speaker, States can provide more services to more people.

Eighty percent of the family block grant must be used to provide food assistance to pregnant, postpartum and

breast-feeding women, and infants and children who are found to be a nutritional risk. This program helps children because it meets the needs of low-income children, pregnant mothers, provides meals and supplements to children, and child care, and allows for the operation of a summer food program to meet the needs of children when they are not in school, but in day care centers, Head Start, summer camp and homeless shelters.

Mr. Speaker, these changes will benefit our children positively over the next few years.

Mr. FOX of Pennsylvania. Mr. Speaker, I yield to the gentleman from Ohio [Mr. NEY] to speak on his perspective not only with regard to nutrition and the importance of our program, but his experience in the State of Ohio in programs dealing with human needs.

Mr. NEY. Mr. Speaker, I thank my distinguished colleague from Pennsylvania [Mr. FOX] for yielding his time.

As my colleagues know, I think the sad part to this whole scenario is the amount of demagoguery that has been cast forth in the media, and I note, as I went around my district this weekend, as I talked to people involved with the school nutrition program, and you start to tell them what the reality is versus the myth, as you well know, they start to see the real intent that is before us with this proposal in Congress.

As my colleagues know, I would like to point out that of course the issue is, as I spoke with my constituents involved with the school food programs, the issue is that we are increasing it, and the issue is that we are sending this to the States by cutting out the middle bureaucracy with more money through the process, and the issue, also the fact of the situation, is that not only are we going to be increasing, but we are going to be guaranteeing that the school lunches are going to be there.

And there is another guarantee. For those of you out there that have worried that this would be somehow sabotaged, somehow set somewhere else when it comes into the States, I think it is clear, if you look at the track record, whether it is money for the seniors that have come down to the States, Mr. Speaker, or whether it is monies that have come down for other essential programs, I think you will find that the States carry out the mission, and if they do not, there is plenty, as we know, out in the system of Federal ability to step in and make it clear of what our intent was.

But beyond that, Mr. Speaker, I want to just address the issue of what we are doing and why we are doing it. and it is because we do care about children, and I guess what disturbs me the most is the fact of picking up the newspapers and seeing a direct attack upon those of us who want to give more money, who want to take care of children, and it is being put forth, and I know you

have seen this. It is being put forth all over the media and told by people that, you know, we are mean-spirited with children, and that is not the reality of it.

Not only are we trying to pass laws to toughen the laws that go after those who try to harm children, but by this proposal we are really cutting out the Federal bureaucracy that is taking more money away, and the 5 percent administrative cap, I think, is a very good thing, but you know we are caring Members who have children. We are Members that come from districts that have needs.

I serve an Appalachian district, very poor school district, and there is no way that we would promote anything that is not going to help our schools.

So, Mr. Speaker and my colleagues, the gentleman from Pennsylvania [Mr. FOX], you know I just feel that it is very unfair, and history is going to prove us right as we proceed down a path to give an increase, to give more money and to guarantee our children good hot lunches. History is going to show that we are correct in what we did, and history is going to show we were not mean-spirited. We simply want to give more money.

How this has been televised and turned around, Mr. Speaker, I think is causing such unfair confusion throughout this country with the people, so I am very proud of what we are going to do. None of us want to hurt children. We all want to help our poor school districts and the children that cannot get lunches, and so I feel confident. I know the past history of our States, and the pressure is going to be there, and this is going to be watched, and the people are going to make sure, and this Congress is going to make sure, that our wishes are carried out.

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the comments of the gentleman from Ohio [Mr. NEY]. I think he has seen in the State of Ohio just how well the programs work in a State that have come back from the Federal Government with the safeguards you put on as finance chairman.

Mr. NEY. And, Mr. Speaker, my colleague, Mr. FOX from Pennsylvania, I can tell you in the 1980s, when the block grants were coming back and the cry was, as this comes from Washington, DC, we are going to lose our money; what do we do? We put in administrative caps. What did we say they are to be used for? Community development purposes, these block grants. What has the track record been from 1981 forward? It has been a track record of success. The bureaucracy was cut loose from here and fed right back into those economic development programs, and the gentleman knows from his State, I am sure, we have a track record of success.

So this is not embarking on nothing new in the sense of doing this in past situations from Congress back to the States. But I believe that it is an issue

where people knew they could demagogue, knew they could twist it, knew they could turn it and try to paint a paint brush of people that just really do not want to help the children. That is so far from the truth.

I know our State has got a track record.

Mr. FOX of Pennsylvania. We do in Pennsylvania as well, so we look forward to working with you on this issue and make sure we bring light to it. The fact is we want to protect the programs for children, and we will work together for that purpose.

Mr. NEY. I applaud you and thank you.

Mr. FOX of Pennsylvania. Mr. Speaker, at this time I yield to the gentleman from Washington [Mr. NETHERCUTT] for comments in support of this proposal to make sure we increase the school lunch programs and protect our children.

Congressman NETHERCUTT.

Mr. NETHERCUTT. Mr. Speaker, I thank the gentleman from Pennsylvania [Mr. FOX] for yielding to me, for this opportunity to speak about the family nutrition block grant.

Mr. Speaker, the reason my colleagues and I are here on the floor tonight is to make the case for the hard choices that we are compelled to make in order to bring the Federal budget in balance, and this is why we continue to supply essential services to our constituents in need. As my friend just said here on the floor, it is a little disconcerting when those who oppose any reform in the existing programs label those programs, the plan for reform by the Republican Congress, as hurting children, or hurting women who are pregnant, or hurting older Americans. It is simply not true, and it is unfair to them, and it is unfair to this body.

Why are we delving into such a sensitive area? The reason is simple. We have a national debt of over \$4.7 trillion. The interest on the debt alone exceeds the defense budget for this year, which is by September we will have to raise possibly the debt ceiling again most likely in excess of the \$5 trillion mark. In a place where we use the term "crisis" quite freely, our gargantuan debt represents the greatest crisis that we face as a Nation, not only us as adults, but our children in future generations. My colleagues across the aisle have been enormously critical of our efforts to combine programs into block grants and to get rid of the cost of the Federal bureaucracy that administers them. They raise the specter of increased malnutrition among the Nation's poor. Nothing could be further from the truth.

What we are doing by creating a family nutrition block grant is to simply combine funding for the WIC program, the child and adult care food program, the summer food program and the homeless children nutrition program. We are cutting out the middlemen, in this case Federal bureaucrats, and getting more money to those families and

children in need. Let us call this the stop feeding the bureaucrats measure. In other words, we will save money by being more efficient in the distribution of Federal funds by moving it closer to those people whom the programs serve. In fact, based on the CBO projections, Congressional Budget Office projections for funding for the current programs, the programs grouped in the family nutrition block grant will increase, and listen to this, by an average of 3 percent a year for the next 5 years. Where is the money going? We have mandated that all of the funding available in the block grant go to low income families, and 80 percent of that money must go to women and children currently served by the WIC program. Women, infants and children will be fine under this program by the Republican majority.

Furthermore, no more than 5 percent can be spent by the States on administrative costs, so I say, Mr. Speaker, let us not be fooled by the rhetoric that comes forth on a daily basis. It is a public relations effort to resist sensible reform.

□ 2200

This will work. It is going to be good for women. It is going to be good for children. We will all be better off in the years ahead. I thank the gentleman.

Mr. FOX of Pennsylvania. I want to thank the speakers that have joined me tonight for this special order on the Republican proposed program to increase WIC and the school lunch programs.

With me today has been the gentleman from Oklahoma, Congressman J.C. WATTS, the gentlewoman from North Carolina, Congresswoman SUE MYRICK, the gentleman from Ohio, Congressman ROBERT NEY, and the gentleman from Washington, Congressman GEORGE NETHERCUTT. I think the case can be made and I hope the American people realize that we Republicans are dedicated to increasing the school lunch programs, approximately 4.5 percent per year from here to the year 2000 and beyond.

We will be working with colleagues on both sides of the aisle to make sure we protect our children in every way possible and to make sure we move forward in good sensible legislation that will help our children and help our families.

I thank the Speaker for this time tonight to be able to express our views on this and, hopefully, illuminate this issue for every one.

#### AFFIRMATIVE ACTION

The SPEAKER pro tempore (Mr. KINGSTON). Under the Speaker's announced policy of January 4, 1995, the gentleman from South Carolina [Mr. CLYBURN] is recognized for 60 minutes as the designee of the minority leader.

Mr. CLYBURN. Mr. Speaker, tonight we are going to continue our discourse here on the subject of affirmative ac-

tion. As you know, Mr. Speaker, that has become a subject that a lot of Americans are concerned about these days. So tonight, once again, I am pleased to join with three colleagues who will take a few moments to try and get the public and our fellow Members in this body to understand a little better what this whole issue of affirmative action is all about.

Tonight, Mr. Speaker, I am pleased to be joined by the gentleman from Mississippi [Mr. BENNIE THOMPSON], my friend, the gentlewoman from Texas, Congresswoman EDDIE BERNICE JOHNSON, and my friend, the gentleman from Alabama, Congressman EARL HILLIARD.

To begin with, Mr. Speaker, as I have noted before, for 18 years prior to my coming to the Congress, I served my State of South Carolina as State human affairs commissioner.

In that job, it was my responsibility to look after the employment practices, the fair housing practices, all of these issues we had under one umbrella, and one of those things had to do with affirmative action.

So every year, while I was there, we issued a report on the subject of affirmative action. I want to use a little from that report to hopefully shed some more light on this subject.

Now, in South Carolina, I am very proud of the fact that affirmative action was the order of the day under four different Governors. I served four Governors, two Democrats, two Republicans. All four of those Governors supported this concept. I want to show you exactly why.

Today on my way back to Washington I was reading through some news clippings, and one of the clippings I read was written by, I think, a Mr. William Rushing from one of the think tanks in the country. He asked the question, just what is affirmative action?

I want to take a few moments and answer that question for him, because he attempted to answer it and got it wrong, like so many of our friends do.

A lot of people get it wrong because they really do not understand it. Other people get it wrong because they intentionally try to misrepresent it and try to inflame people with such notions as quotas and preferences, those kinds of words that they know will inflame people.

So let us look at this chart here. You will see, Mr. Speaker, exactly what affirmative action is.

If this can be seen, affirmative action is a written document, outlining the steps an agency would undertake to reach fair representation of all race and sex groupings in its jurisdiction.

In order to do a good affirmative action plan, you go through a lot of things, a policy statement. You look at the responsibilities for implementation. You look at disseminating the policy. But the most important thing about affirmative action is to utilize what we call availability, utilization

and availability and analysis, looking at the work force, looking at the job groups and looking at the availability of various people in that work force.

Now, let us look at exactly what we try to do when we analyze a work force. First of all, the work force analysis that we do happened to deal with things like just who all worked in this particular environment, looking at exactly what the groupings are. Then when you look at the groupings of people who are working there, then you look at the job group analysis; that is, to look at all of the groupings of jobs by their categories, whether you are talking about professionals, executives and all of that sort of thing. And then we look at the availability.

Now, that is something that is very important, because this is where people get it wrong. This has absolutely nothing to do with population. For instance, it may be that in a particular jurisdiction the population may be 30 percent black, but when you look at the kind of jobs involved in this work force and look for the number of people with the requisite skills for doing that job, what you may find is that the black people with the requisite skills may only constitute 20 percent. So then you will not be asking anybody to use 30 percent as a goal because of the population. You will then look at the goal being 20 percent, because that is what the availability is, that is what the number of people with the requisite skills may be.

Once you find that, that is when you then get to the issue of goals and timetables.

Now, I want to spend just a couple of minutes before yielding to Ms. EDDIE BERNICE JOHNSON of Texas on this whole notion of goals, because that is where this term "quota" seems to creep in time and time again. I have heard people say, goals mean quotas and that is that. Nothing could be further from the truth, and I want, and hopefully you can see what we call a goals form, because this is very, very interesting, for those people who really want to know what this issue is.

A goals form has to do with looking at the current work force, looking at what the current work force is in a particular agency or a particular State. And look at this goals form. Let us look first at this line that says that "executives." When we look at the current work force and we see that here you have got 21 white male executives, one black male executive, over here the goal, that means you have a total of 23 with one white female.

Now, what you have got here is a work force that shows that 91 percent of all the people who make up that work force happen to be white males. But the interesting thing is, when you go over and you look at the availability of people, you see that 8 percent of the people who are available in the work force happen to be black males. Almost 30 percent, 29.8 percent happen

to be white females, and 9 percent happen to be black females.

When you look at that, what you will see, if you have got 8 percent that is available and you only got one, which is 4 percent, that means that you are under utilizing those people by, of black males, by 3.7 percent. You are under utilizing white females by 25.5 percent, and black females by 9 percent.

Now, what you do then is look at establishing annual goals based upon people's availability in the work force. And so you then look and say, well, if the availability is 8 percent, then that is how you set your goals, which is the floor. We are saying that at least 8 percent of the people in that work force ought to be black males.

The interesting thing is, if the total is 23, 8 percent of 23 happens to be two. And so that is all you are talking about. If you have 23 people at that level and only 8 percent of the people at that level qualified to do the job happen to be black, then the goal would only be 8 percent of the total number of hires.

Now, that is what goals setting is all about.

Finally, if you look at the second category here, you will find in "professionals" the numbers run a little bit different. But there is something here about the professional I want to show you, because it talks about how you really find out whether or not you need to set a goal.

If you look at the professionals, you will see under professionals, there are 26 white males, only 3 black males, 7 white females, 3 black females for a total of 39. But now when you look at availability, you find that black males constitute 5 percent of availability. And you look here, you find out that that means simply that there is no under utilization, because they have 5 percent of availability, yet they end up in the work force at that job category 7 percent, so in actuality, they are 2.7 percent over represented. So do you need to do affirmative action there? The answer is no. That is why we see a big "no" sitting in this category of under utilization.

So, Mr. Speaker, I thought I would point this out tonight before we get started in this discussion so that those people looking in tonight can actually see what a goal is and, hopefully, it will in some way put them in a better frame of mind to listen to exactly what we have to say here tonight, because I think that if we can get a good, solid discussion going on this subject, then we all can join with our President, as he reviews this issue. I think it needs to be reviewed, because people misunderstand it.

There are a lot of people in this Congress, there are a lot of people in the White House who really need to understand what they are talking about when they talk about affirmative action, because most of them have talked about an issue based upon their own

personal beliefs rather than studying this issue as many of us have as professionals for more than 18 years.

So I am pleased now, to go further in this discussion, to yield to my good friend, the gentlewoman from Texas [Ms. EDDIE BERNICE JOHNSON].

Ms. EDDIE BERNICE JOHNSON of Texas. Thank you, Mr. CLYBURN. I appreciate your efforts and leadership.

Affirmative action is a phrase that has caused a great deal of noise and potential separation in this country. And yet, it was brought about for a remedy. The only reason why the phrase was ever devised is to address inequities in this country.

Frequently we have said that this nation has come as far as it has with less than half of its brain power. One of the reasons why we say that is because women and minorities have been virtually ignored.

Affirmative action actually started under President Richard Nixon, who recognized the inequities that existed and recognized the loss to this country.

First of all, if there are no opportunities for minorities to have decent jobs and have an opportunity to move up, then they are not going to pay the taxes that they ought to be paying because every one ought to share that.

□ 2215

However, you cannot pay if you do not make it. I think that some think that the only persons that have been helped have been black Americans. That is so far from the truth.

First, I think it is well-known that persons who have gained most by affirmative action have been white females. However, beyond that, especially in my State of Texas, short men, short white men, have gained an opportunity to be members of the Texas Rangers, who had a ceiling, a base on how tall one must be to be a Texas Ranger.

I do not know if that meant that they had to be tall enough for someone to look in their faces upward when they stopped their cars on the Texas highways, or what, but it was discriminatory. It had eliminated virtually all Mexican-Americans in Texas from becoming Texas Rangers. Blacks were, perhaps, eliminated for other reasons. Also, white males that were short had been eliminated from being hired.

To remove this kind of discriminatory measure that really had no force, had no reason to be there, offered first opportunities to white males quicker than anyone else, because that is always the case. 100 percent of the persons who have been President of this country have been white males; 90 percent of the ones who make up this body where we serve are white males. I do not know that any affirmative action program has served to hurt white males.

It helped white males to get jobs on Southwest Airlines, when men brought a suit because they were eliminated from being hired as airline attendants,

when they were called stewardesses. Then other airlines, too, have now started to hire. Most of the diversity went to white males when the change came.

I started out as a young professional, before I was old enough to vote, at the Veterans' Administration Hospital in Dallas as a registered professional nurse. The majority of the patients were male. That is because the majority of the veterans were male. The majority of the nurses were female, because traditionally, nursing had been thought of as a female profession in this country. Therefore, most of the nursing assistants had to be male, because of lifting, privacy.

However, that has changed, now. Why did it change? Because of sensitivity. Affirmative action has brought about more sensitivity than any other measure, and recognizing that perhaps whole groups of people have been left out of professions that have something to offer if they felt there were opportunities within those professions.

Mr. Speaker, this affirmative action is not just for black Americans, though most battles to do with civil rights have been fought by black Americans, but we are the last ones that receive most of the benefit from many of the battles that we fight. However, that is OK, because what is good for us is good for America. Fairness and opportunity are good for all Americans.

Now we talk about being a global society, and a leader in the global world. We cannot be global leaders, eliminating and ignoring and not including diversity.

Mr. Speaker, we say we are a nation of nations, and if we are, and we are, we have to be diverse. Every American must feel that there is an opportunity. The Constitution guarantees that, and it is recognized that we did not get covered by the Constitution until later in its history, because, you know, just 50 years ago, in 1944, were blacks able to vote in the primary in Texas, just 50 years ago. Laws had to be passed, lawsuits, lots of time in court, just to get the right to cast a vote.

We have done a lot for this country. We have fought very, very vigorously in every war. We have brought about the opportunities for diversity in this country. We have brought the attention to the need for diversity in this country. I think if we do nothing else, we need to continue to educate the people of this Nation that affirmative action is for all people.

There have been opportunities for non-blacks to work for Members of this Congress that are black. I think that is important. I think it is important to have those kinds of relationships and those opportunities, but without that sensitivity, without the idea of affirmative action, I am not a quota supporter, because it implies just putting someone in the place, whether they are qualified or not. I do not support that. It is not necessary. There are numerous people that, given the opportunity,

could do a good job, and perhaps even a better job.

Mr. Speaker, a large number of the athletes professionally in this country are black Americans. How many black Americans own clubs and organizations? I think they are 100 percent owned by white males, or at least 95 percent. There might be one or two white females that open them.

So who needs affirmative action? The sensitivity needs to go to the minds of white Americans, that is who needs it, to remind them to be fair, to remind them that this is supposed to be a color-blind society. However, when it goes blind, it does not see color at all.

That is all we are attempting to do, is sensitize. I hope to live to see the day that we will have a color-blind society. We seem to fade into obscurity without some rules, without some reminders that this country has offered fairness as one of its core foundation rules. It just so happens that unless reminded, a large group of people get left out.

Our intent, Mr. Speaker, is to sensitize, to educate, and we are not going away. We are here for the long haul. We want to see affirmative action live. We want to see it live in behavior. We want to work, we want to earn, we want to be responsible, but we cannot do it without an effort to give us an opportunity.

Mr. Speaker, I believe it is a battle worth fighting, and I really hate to see the exploitation that is being promised now to the American people to use race as dividing and bringing about lots of expression of hate in this country by running for President to get rid of affirmative action. I think that is a very, very slimy way to attempt to fool the American people and exploit the emotions of people who feel that they have been mistreated.

I think we need to study the issue, I think we need to see if it is working, where it is working, and who it is working for, and we need some more sensitivity training, perhaps, but it is not going away. We will not allow it to go away. This is America, a nation of nations.

Mr. CLYBURN. Mr. Speaker, I thank the gentlewoman very much for her comments.

I wanted to point out just one thing that she talked about. It is kind of interesting, but she mentioned that affirmative action, especially the goals and timetables part of it, got started under a Republican administration, under Richard Nixon.

At the time, the very first group that he brought under the goals and timetables happened to be the construction group. The interesting thing is, Mr. Speaker, that at the time of affirmative action, the goals and timetables, the time was established, and 85 percent of all the supervisors in the construction trades had to be white males.

If we look at this little chart here now, that figure still holds true today. After 20 years, 84.9 percent, 85 percent,

are still white males. I thank the gentlewoman so much.

I yield to the gentleman from Mississippi, BENNIE THOMPSON, who I think wants to talk a little bit about what affirmative action means to the business community.

Mr. THOMPSON. First of all, Mr. Speaker, I would say to the gentleman from South Carolina, I thank him for convening this special order, but also I would like to associate myself with the comments made by my colleague, the gentlewoman from Texas. Clearly, affirmative action is on the minds of everyone in this country. We cannot let it fall victim to a certain radical element in this country that would like to turn back the progress that has been made.

Clearly, Mr. Speaker, as we talk about affirmative action, let us be very clear that it was created because a void was in this country as it related to employment, as it related to business, and as it related to minority participation in the broadest spectrum of life.

As the gentleman indicated, all of the Presidents since the early sixties have affirmed through Executive order that affirmative action should be the law of the land. This is the greatest country in the world. We cannot fall victim to that radical element that would like to move us back, away from affirmative action.

The lack of minorities in the workplace is well documented. If we talk to anyone, as they discuss affirmative action, we all agree that affirmative action has not made the dent that we would like for it to make, but we cannot argue that black people are better off without affirmative action, because they are not.

However, more importantly than the statistics, affirmative action for the first time has allowed minorities in the board rooms, employment in Fortune 500 companies, and basically, to become involved in the entire fabric of America, so we really cannot allow ourselves to deny minorities, women, or whomever, an opportunity to participate in the entire melting pot of America.

Also, Mr. Speaker, what we have to do is understand that the notion of affirmative action at no point signifies less than acceptable standards for participation. None of us here would ever, ever argue that if a job is available, that we should give it to a less qualified individual. If a contract is available, we should not give that contract to anybody other than some who can perform it, not to a less qualified contractor.

Basically, business is better off. As business participates in affirmative action, business increases. You and I know businesses, Coca-Cola, IBM, a lot of major corporations who have recognized the need for diversity in the workplace. They have diversified their work force, but they also have increased their business by diversifying,

because affirmative action is a very positive step.

Mr. Speaker, business, believe it or not, in this country is better off with affirmative action. However, the notion of quotas is really a misnomer in this definition, because we are not talking about quotas, but the opposition to affirmative action tries to bring the cue word into the debate.

However, if we look at quotas in business, all businesses operate on quotas. They talk about you have to perform certain business functions, you have to have certain targets. A number of issues relating to quotas for businesses are very positive.

□ 2230

Sometimes people try to say businesses are against quotas. But in order for businesses to be successful, they have to have certain quotas that their employees have to meet in terms of productivity.

It is a positive. So as we look at the term "quota," we look at it as goal-setting, as targeting, and not something negative. Businesses understand that quotas are important.

A part of that, Mr. Chairman, bringing affirmative action to the business place has also diversified employment. It is important that corporate America reflect this country. If corporate America is insensitive to all of us here, then we are not doing what is in the best interests of this country.

Last, let me put forth the notion that this country supposedly by trying to shoot down affirmative action is responding to last November's election. Supposedly the angry white males in this country feel that they have been given a raw deal, or made to be somehow second class. That is not the notion of affirmative action. We ascribe and do so in concert as a group here tonight that affirmative action is a very positive step for this country.

So those individuals who might see it as a negative, we hope that you will not continue to do that, that affirmative action is positive, it is healthy, and there are no statistics that I have been able to see nor have we been able to garner even from the opposition that affirmative action is not a good tool for alleviating discrimination and bringing about diversity in the workplace.

I yield back to the gentleman from South Carolina [Mr. CLYBURN] so that we can begin the dialog that is so desperately needed to bring some reason to the debate rather than the hysteria that we hear so often from the people on the radical right.

Mr. CLYBURN. I thank the gentleman from Mississippi [Mr. THOMPSON].

Let me look at this chart here to reinforce a point that you have just made. I think all of us will agree that there is in fact a phenomenon out here that can be called the angry white male. The question is, why are they angry? I say it is because of the same reason that black males are angry. We

are angry because of what has happened to family income in recent years.

If you look at this chart here, you will see that between 1950 and 1978, all the people in our society were growing together. I think it was President Kennedy who said that a rising tide lifts all boats. All the boats were going up together.

In the first quintile here, you will see, in the bottom 20 percent, the growth in that timeframe, in that 28-year period, the growth of 138 percent. And in the top 20 percent, there was a 99 percent. Everybody went up, 98, 106 percent, 111 percent, 99 percent. But what has happened to the growth in family income since?

What we see here between 1979 and 1993, that growth has been negative for the people. It has dropped by 58 percent for people in the low 20 percent, 7 percent in the next 20 percent and 3 percent in the middle here. Yet in the upper 20 percent, their growth has gone up by 18 percent.

So, yes, people are angry because they are frustrated. They are working harder and they are making less money. So that is where the anger is. And those merchants of ill will are using this anger and this frustration trying to turn it into hate and, therefore, they are targeting the weakest elements of our society for these people to vent their anger on.

So you are absolutely correct. I thought I would just use this chart to reinforce that, so nobody is denying that there is anger out there but that anger is not just among white people, it is among black people as well, because they, too, fall in these percentiles here.

Let us now go to our good friend, the gentleman from Alabama [Mr. HILLIARD], the lawyer in this group, who is going to talk a little bit about the public policy.

Mr. HILLIARD. I thank the gentleman from South Carolina [Mr. CLYBURN].

This country has an obligation, this Government has an obligation to set the tone for the direction in which this country should go. And oftentimes we do that through laws. In many instances we leave it up to the States and in those situations where the States in this country set policies or make laws that are congruent, that keep the people happy, keep people satisfied, and obtain their objectives, the Federal Government as a rule does not invade their turf or does not invade their territory.

But sometimes, because of the fact that we have 50 different States, the Federal Government has to step in in order to standardize, or set a public policy, that will be uniform, especially when it affects how the Federal Government itself does business or how an agency of the Federal Government operates.

I say that to say that sometimes in America the Congress has looked and

has not been satisfied with what it has seen, and in order to correct even a President, to correct certain things, they set certain rules.

Let me give an idea of what I am talking about. After World War II, our country became very much aware of the world, and America started trading, and not only trading with other countries on a very large scale but many of our larger corporations started moving their plants into other countries, started producing whatever they produced in other countries.

In the 1960's and the 1970's, the Congress decided that it wanted to make sure that a large number of jobs remained in America. So it came up with the Buy American Act.

Now, the Buy American Act was not a mandate but it was simply a situation where Congress gave tax breaks and gave points and they gave set-asides to achieve its public policy objective, making the business environment so conducive that companies would want to remain in this country, would want to produce in this country.

Oftentimes in America, we see where certain things happen to achieve a certain result, such as with veterans. After World War II, we found that a large number of veterans had served several years in the service, some on the battlefield, others in other areas, but contributing to the war efforts.

Congress wanted to reward those who had supported this country because, some of them, some males did not go, some females did not go, they stayed home, they went to college, and they were able to get all the good jobs because they were well educated.

So when the veterans came back, they did not have the experience, did not have the education that the others had, so Congress wanted to try to rectify to a limited degree or to a certain extent some of the problems that the veterans had incurred by going out defending this country.

So they set up a point system where it gave so many points on any examination for a Federal job to a veteran, and if he had been injured, it gave him additional points.

If someone took a test to work in the post office and he just happened to be a veteran, because of his service to the country, we gave him an extra 5 percent or an extra 10 percent. This is because we wanted to set a public policy. We wanted to encourage the Federal agencies to hire veterans. And we also wanted to help the veterans who had served their country.

So we see in these two different situations, the Buy American Act and the veterans act, where Congress has decided to invade the turf of agencies and the Federal Government itself by making things more compatible for veterans.

The States have done the same thing. They gave points to veterans. Many of them passed the Buy Americans Act so

that they wanted to encourage people to do certain things.

Affirmative action is also a public policy that has been established. It has been established by the national government, in this case, in many instances by executive orders of various Presidents, and also be certain laws that have been included in their agencies' rules and regulations. These laws do not mandate but just call for certain situations to take place. In other words, it creates incentives.

It does not mandate, it does not demand, it does not make, but it just creates a favorable situation. It may be a tax break to those persons selling to a minority, in the case of a radio or TV station, because Congress wants the airwaves to be diversified. It does not just want all conservatives occupying and owning all the radio and TV stations that almost happens to be the case now. So incentives are given.

But if you look at who benefits from those incentives, you will find that all Americans benefit. In the case of a radio station being purchased by a minority and certain tax preferences are given to the majority person who sold it, you find that that person benefits who is a majority. The minority benefits because he has the station.

So, you see, it works for America. Just like the Buy American Act, just as the preference that has been given to veterans in terms of their examinations, their additional points, it served the veterans, it serves our country. Affirmative action also serves our country.

But let me go beyond just public policy as it relates to the Federal Government. Corporate America has been swinging in the wind. Every time a law is made, every time an Executive order is made, every time an agency of the government makes a rule and a regulation, it has to change, because it has to obey the laws, the rules, and the regulations.

We have a situation, for about the last 25 years, we have been, not demanding but we have been encouraging corporate America to perform certain acts. Many of them have very good affirmative action policies that they have built up over the past 20 something years. They do not want to dismantle them. They are very satisfied. It creates a situation where corporate America has been able to diversity its work force, diversity its boards of directors in many instances, and it has opened up America so that all those different groups that make up America happen to be included in the decision-making process, in the work force, and not just as consumers.

It makes a very healthy situation. The healthy situation is what Congress has sought to create, not just with the government, not just with its agencies, but with corporate America. And corporate America is moving right along.

Any interruption would cause additional problems, additional changes, and it would actually be a setback.

We do not want that. Corporate America does not want that. And this government does not want that.

Now, who wants it?

□ 2245

Those who seek to divide America, and those who seek to divide America only for their own selfish reasons or purposes. And who would seek to divide America? If things are moving along, if we have a situation where everyone has been included in our work force, everyone is being included in a diversified manner on all of our boards making decisions, who would object?

Who would be angry because there is a policy that Latinos, women and blacks should be included in the work force or should be included in the decision-making process or decision-making boards, on decision-making boards, who would be angry? I cannot think of any real American that would be angry, regardless of his gender, regardless of her situation. It would be un-American to be angry.

Mr. CLYBURN. I thank the gentleman so much. Let me point out it is kind of interesting you talked about the interruption, it is kind of interesting in the 1960's when we first started discussing what needed to be done in order to improve the status of black Americans, there was an interesting figure that I think we ought to all look at. When you compared black mayors' salaries to white mayors you would find in the 1960's, black mayors made 67 cents to every dollar that was made by white males.

We put in the program of affirmative action in the 1960's and it is kind of interesting that by 1979 that figure had gone to 81 cents to every dollar. But along came the 1980's and we had an interruption in affirmative action where there was no longer any force, the Reagan administration attempted to undo it, calling in studies, studies which did not prove that affirmative action did what they said it was going to do, but during that period, by the time we got to 1990, that figure had dropped again back to 76 cents to every dollar.

So, my point is in the 1960's when we started this, it was 67 cents, it got up to 81 cent in the 1970's and now we are retrogressing and so that is what has happened.

Another little thing here is kind of interesting, the unemployment rate has started to do the same thing. The average unemployment in the 1950's was 4.5 percent, that crept up. In the 1980's the average unemployment went up to 7.3 percent. In the 1990's we started down again. When this administration came into office it was 7.7 percent, it went as low as 5.6 percent, is now up around 5.7 percent, so we average so far 6.4 percent.

So I say we are going in the right direction with our economy, and there is no reason for any white males or white females to be angry with black people because affirmative action did not do this.

So, let me look. I think we have about 10 minutes remaining. Let me give each one of us 3 minutes here to kind of summarize, and I will go now to Congresswoman JOHNSON.

Mrs. EDDIE BERNICE JOHNSON of Texas. I thank the gentleman. I let me just share very quickly that my father told me that the reason why he did not want to go to college is because he did not want to teach or preach, he wanted to be a businessman. The opportunities did not exist. So, therefore, there was no encouragement to go on for education. He made a very good living and was a very good father to all of us.

Times have changed, and we do not want to go back. We want our young people to understand that if they choose a non-traditional profession, if they choose to be a scientist, if they choose to be a physician, the opportunities will be there and those opportunities have not always been there.

I remember when Texas paid black students to leave the State to go to medical school. We do not have to do that anymore, but we do not want to go back. We do not want to go back where we were. When young people see that their parents have an opportunity because they stayed in school, they do not have to continue to struggle because they cannot get a contract because they prepared themselves well, then young people will be encouraged to do the right thing and to be well qualified for jobs and professions that they would like to contribute.

But if we go back, we will say to the world, as a global leader that in this country we do not treat all people the same, all people do not have an opportunity, and so take to the streets, break the law. Those are the opportunities you have. We do not want to go back. We would plead with the people, let us go forward. This is America where all people are supposed to have a right to the dream, and the only way that we have had a real little glimpse at that dream is through opportunity.

I thank the gentleman very much for having this session tonight.

Mr. CLYBURN. I go now to my good friend the gentleman from Mississippi [Mr. THOMPSON].

Mr. THOMPSON. I thank the gentleman. Being one of the five Members from the State of Mississippi here in Congress, I was very happy to see the Mississippi State legislature finally get around to taking the slavery law off the books.

My point here is there are so many things in America we have to correct so that even by taking slavery off the books, that is the first step. But if you look at my State again we have more black elected officials than any other State, and you would assume, rightfully so, that that is something to be proud of and we are. But the fact is that had to go to court to give African-Americans in Mississippi the opportunity to elect the candidates of their

choice. Our State government did not want that and I am tying this into affirmative action and civil rights.

We have to have laws that encourage people to do the right thing. Affirmative action encourages individuals to do the right thing.

But the broader issue is leadership. The cop-out is to say we do not need affirmative action, we are in a color-blind society, there should be no preferences given. But that is not leadership. Leadership recognizes the fact that there is a history in this country that a lot of us are not proud of, but we are men and women composing a Congress who are willing to bite the bullet and correct the past evils.

Leadership dictates making the difficult decisions, not running from them.

Mr. CLYBURN. I thank the gentleman so much.

I yield to my good friend from Alabama [Mr. HILLIARD].

Mr. HILLIARD. I thank the gentleman very much.

In our society, especially in America, there are certain words that we do not like to use such as discrimination, segregation, set-aside, preferences, goals, and I do not know why people want to always avoid using those words.

To me if the chair over there is brown, it is brown. And you say that, and you do not have to try to go around corners giving a description of it. In America, anything that might be negative in any sense, that might be bad, I find that there are so many Americans afraid to approach the subject, afraid to discuss the subject, and they whisper about it and they try to get around it by making everything seem to be what it happens not to be. And that is just America.

But we have to change that. We still have discrimination in America, and if you do not know I want to tell you, we still have discrimination in America.

Now once you understand that, you will understand that, sure, we have gotten rid of discrimination de jure which is by law, but we still have discrimination de facto. In fact you can look at any corporation in America, you can look at any agency of any State government and you will find that it does not fairly represent the number of minorities, whatever minority it is in that area. If it is in Arizona, I can tell you now that it does not fairly represent our Mexican-Americans; if it is in North Dakota or South Dakota it does not fairly represent Indians; in Birmingham, AL, it will not fairly represent African-Americans. In Miami it will not fairly represent Cubans.

What I am saying is we do not have complete diversity. We need goals, we need incentives, we need affirmative action to create diversity in our country.

Mr. CLYBURN. I thank the gentleman very much.

Mr. Speaker, let me close this hour by first of all thanking my friends for joining me this evening. Hopefully to our fellow Members in the House and to the public-at-large looking in tonight, we have shed some light on this subject.

We hear a lot of talk today about the time for affirmative action has passed. Let me say in closing just a little something to you about time.

My friends in this body who talk about the need to do away with affirmative action are always quoting Martin Luther King, Jr., in his "I have a dream" speech where he talked about judging people by the content of their character rather than the color of their skin. But you know, Martin Luther King said something about time when he wrote that letter from the Birmingham City Jail in 1963, just a few months before he made the "I have a dream" speech. He said time is neutral; time is never right and it is never wrong, time is only what we make it. And he went on to tell us in that letter that we are going to be made to repent in this generation not just for the vitriolic words and deeds of bad people, but for the appalling silence of good people.

And then King said this, and I close. King said, "I am beginning to believe that the people of ill will in our society make a much better use of time than the people of good will." And so I call for the people of good will in our society to start making a much better use of time and to remember that we, the people of good will, ought to make more use of our time, at least better use of our time than the people of ill will.

With that I thank my colleagues and good night.

#### LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. ROGERS (at the request of Mr. ARMEY) for today until 7:15 p.m., on account of personal reasons.

Mr. BUNNING of Kentucky (at the request of Mr. ARMEY) for today, on account of illness.

Mr. RANGEL (at the request of Mr. GEPHARDT) for today and the balance of

the week, on account of a death in the family.

#### 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 Mr. WISE) to revise and extend their remarks and include extraneous material:)

Ms. KAPTUR, for 5 minutes, today.

Mr. OWENS, for 5 minutes, today.

Mr. WYNN, for 5 minutes, today.

(The following Members (at the request of Mr. EHRlich) to revise and extend their remarks and include extraneous material:)

Mr. DORNAN, for 5 minutes, on March 7.

Mr. RIGGS, for 5 minutes, each day, on March 7, 8, 9, and 10.

#### EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. WISE) and to include extraneous matter:)

Ms. HARMAN.

Mr. RANGEL.

Mr. MCDERMOTT.

Mr. PALLONE.

Mr. ANDREWS.

Mr. STOKES.

Mr. DURBIN.

Mr. STARK in two instances.

Mr. TOWNS in six instances.

Mr. HAYES.

Ms. WOOLSEY.

(The following Members (at the request of Mr. EHRlich) and to include extraneous matter:)

Mr. BEREUTER.

Mr. CRANE.

Mr. GILMAN in two instances.

Mr. PORTMAN.

(The following Members (at the request of Mr. CLYBURN) and to include extraneous matter:)

Mr. LUTHER.

Mr. PACKARD.

#### ADJOURNMENT

Mr. CLYBURN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 59 minutes p.m.), under its previous order, the House adjourned until tomorrow, Tuesday, March 7, 1995, at 9:30 a.m.

#### EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports concerning the foreign currencies and U.S. dollars utilized by various individuals and groups of the House of Representatives during the fourth quarter of 1994 in connection with Speaker-authorized official foreign travel, pursuant to Public Law 95-384, are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO INDIA AND ENGLAND, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 10 AND NOV. 20, 1994

Name of Member or employee	Date		Country	Per diem <sup>1</sup>		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>
Hon. Barbara-Rose Collins	11/10	11/19	India	31.23	1,418.00						1,418.00
	11/19	11/20	England		233.00				(?)		233.00
Meredith Cooper	11/10	11/19	India	31.23	1,418.00						1,418.00
	11/19	11/20	England		233.00				(?)		233.00
<b>Total</b>					3,302.00						3,302.00

<sup>1</sup> Per diem constitutes lodging and meals.  
<sup>2</sup> If foreign currency is used, enter U.S. dollars equivalent; if U.S. currency is used, enter amount expended.  
<sup>3</sup> On Nov. 19, 1994, no flight available to United States; overnight stay in London.

BARBARA-ROSE COLLINS.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO THAILAND, INDONESIA, AND INDIA, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 11 AND NOV. 22, 1994

Name of Member or employee	Date		Country	Per diem <sup>1</sup>		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>
Jim McDermott	11/10	11/11	Thailand		216.07		5,946.95				6,163.02
	11/11	11/13	Indonesia		464.00						464.00
	11/13	11/22	India		1,647.00						1,647.00
Charles Williams	11/10	11/11	Thailand		216.06		5,358.95				5,575.01
	11/11	11/13	Indonesia		464.00						464.00
	11/13	11/22			1,647.00						1,647.00
<b>Total</b>					4,654.13		11,305.90				15,960.03

<sup>1</sup> Per diem constitutes lodging and meals.  
<sup>2</sup> If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JIM McDERMOTT,  
Dec. 31, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MS. HANNELORE HEYEN, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 14 AND NOV. 19, 1994

Name of Member or employee	Date		Country	Per diem <sup>1</sup>		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>
Hannelore G. Heyen	11/14	11/15	Taiwan		\$234.00						234.00
	11/15	11/17	Vietnam		652.00						652.00
	11/17	11/19	Philippines		380.00						380.00
Commercial airfare							\$3,769.95				3,769.95
<b>Total</b>					1,266.00		3,769.95				5,035.95

<sup>1</sup> Per diem constitutes lodging and meals.  
<sup>2</sup> If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

HANNELORE G. HEYEN,  
Dec. 30, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, HONORABLE JAMES D. FORD, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 11 AND NOV. 21, 1994

Name of Member or employee	Date		Country	Per diem <sup>1</sup>		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>
James D. Ford	11/11	11/12	Germany								
	11/12	11/14	Ivory Coast								
	11/14	11/15	Ghana								
	11/15	11/16	Benin								
	11/16	11/17	Niger								
	11/17	11/20	Nigeria								
	11/20	11/21	France								
	11/21		United States								
<b>Total</b>					2,100.00		624.00				2,724.00

<sup>1</sup> Per diem constitutes lodging and meals.  
<sup>2</sup> If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

JAMES D. FORD,  
Dec. 5, 1994.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, MR. MIGUEL MARQUEZ, HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN NOV. 30 AND DEC. 4, 1994

Name of Member or employee	Date		Country	Per diem <sup>1</sup>		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>	Foreign currency	U.S. dollar equivalent or U.S. currency <sup>2</sup>
Miguel Marquez	11/30	12/2	Mexico								
	12/2	12/4	Guatemala		150.00						150.00
Commercial airfare							772.45				772.45
<b>Total</b>					150.00		772.45				922.45

<sup>1</sup> Per diem constitutes lodging and meals.  
<sup>2</sup> If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

MIGUEL MARQUEZ,  
Feb. 20, 1995.

EXECUTIVE COMMUNICATIONS,  
ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

474. A letter from the Deputy Secretary of Defense, transmitting a report on C-17 milestones and exit criteria; to the Committee on National Security.

475. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment and services sold commercially to Greece (Transmittal No. DTC-3-95), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

476. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of a proposed license for the export of major defense equipment and services sold commercially to Sweden (Transmittal No. DTC-1-95), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

477. A letter from the Chairman, Board of Governors of the Federal Reserve System, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

478. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(d); to the Committee on Government Reform and Oversight.

479. A letter from the Administrator, General Services Administration, transmitting an informational copy of the fiscal year 1996 GSA's Public Buildings Service Capital Investment and Leasing Program, pursuant to 40 U.S.C. 606(a); to the Committee on Transportation and Infrastructure.

480. A letter from the Secretary of Energy, transmitting the Department's 15th annual report on the Automotive Technology Development Program, fiscal year 1993, pursuant to 42 U.S.C. 5914; to the Committee on Science.

481. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to increase, effective as of December 1, 1995, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans, and for other purposes; to the Committee on Veterans' Affairs.

482. A letter from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, United States Code, to provide for cost savings in the housing loan program for veterans, to limit cost-of-living increases for Montgomery GI Bill benefits, and for other purposes; jointly, to the Committees on Veterans' Affairs and National Security.

483. A letter from the Director, Office of Management and Budget, transmitting a draft of proposed legislation to revise and streamline the acquisition laws of the Federal Government, and for other purposes; jointly, to the Committees on Government Reform and Oversight, National Security, the Judiciary, International Relations, Small Business, Science, and Commerce.

REPORTS OF COMMITTEES ON  
PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk

for printing and reference to the proper calendar, as follows:

Mr. CANADY: Committee on the Judiciary. House Joint Resolution 2. Resolution proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives; with an amendment (Rept. 104-67). Referred to the House Calendar.

Mr. DREIER; Committee on Rules. House Resolution 105. Resolution providing for consideration of the bill (H.R. 1058) to reform Federal securities litigation, and for other purposes (Rept. 104-68). Referred to the House Calendar.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. THOMAS:

H.R. 1134. A bill to amend title XVIII of the Social Security Act to extend certain savings provisions under the Medicare Program, as incorporated in the budget submitted by the President for fiscal year 1996; to the Committee on Ways and Means, and in addition to the Committee on 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. ROBERTS:

H.R. 1135. A bill to improve the Commodity Distribution Programs of the Department of Agriculture, to reform and simplify the Food Stamp Program, and for other purposes; to the Committee on Agriculture.

By Mr. GILMAN (for himself, Mr. FILNER, Mr. EVANS, Mr. TORRICELLI, Mr. UNDERWOOD, Mr. CUNNINGHAM, Mrs. MINK of Hawaii, Mr. LANTOS, Ms. PELOSI, Mr. YATES, Mr. FROST, Mr. MINETA, Mr. FALEOMAVAEGA, Mr. ABERCROMBIE, Mr. STARK, Ms. LOFGREN, Mr. BILBRAY, and Mr. SERRANO):

H.R. 1136. A bill to amend title 38, United States Code, to deem certain service in the organized military forces of the Government of the Commonwealth of the Philippines and the Philippine Scouts to have been active service for purposes of benefits under programs administered by the Secretary of Veterans Affairs; to the Committee on Veterans' Affairs.

By Mr. LAHOOD (for himself and Mr. INGLIS of South Carolina):

H.R. 1137. A bill to amend title 39, United States Code, to prevent certain types of mail matter from being sent by a Member of the House of Representatives as part of a mass mailing; to the Committee on House Oversight, and in addition to the Committee on Government Reform and Oversight, 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. MCDERMOTT:

H.R. 1138. A bill to amend the Internal Revenue Code of 1986 to reduce the harbor maintenance tax if the Harbor Maintenance Trust Fund is overfunded; to the Committee on Ways and Means.

By Mr. SAXTON (for himself and Mr. STUDDS):

H.R. 1139. A bill to amend the Atlantic Striped Bass Conservation Act, and for other purposes; to the Committee on Resources.

By Mr. SCHUMER:

H.R. 1140. A bill to amend the Public Health Service Act to provide for the preven-

tion, control, and elimination of tuberculosis; to the Committee on Commerce.

By Mr. YOUNG of Alaska (for himself, Mr. SAXTON, and Mr. STUDDS):

H.R. 1141. A bill to amend the act popularly known as the "Sikes Act" to enhance fish and wildlife conservation and natural resources management programs; to the Committee on Resources.

By Ms. ESHOO:

H.J. Res. 75. Joint resolution proposing an amendment to the Constitution of the United States to provide for 4-year terms for Members of the House of Representatives and to provide that Members may not serve more than three terms; to the Committee on the Judiciary.

By Mr. LANTOS (for himself, Mr. SOL-OMON, and Mr. TORRICELLI):

H. Con. Res. 33. Concurrent resolution expressing the sense of the Congress regarding a private visit by President Lee Teng-hui of the Republic of China on Taiwan to the United States; to the Committee on International Relations.

By Mr. POMBO (for himself, Mr. YOUNG of Alaska, Mr. LUCAS, Mr. TALENT, Mr. CRANE, Mr. SHADEGG, Mr. CUNNINGHAM, Mr. BILBRAY, Mr. DOOLITTLE, Mr. SCHAEFER, Mr. TAUZIN, Mr. STUMP, Mrs. CHENOWETH, Mrs. CUBIN, Mr. BAKER of California, Mr. RIGGS, Mr. HUNTER, Mr. COOLEY, Mr. GRAHAM, and Mr. WAMP):

H. Res. 106. Resolution requiring that certain introduced measures be accompanied by statements of the constitutional authority for enacting them; to the Committee on Rules.

By Mr. THOMAS:

H. Res. 107. Resolution providing amounts for the expenses of certain committees of the House of Representatives in the 104th Congress; to the Committee on House Oversight.

## MEMORIALS

Under clause 4 of rule XXII,

23. The SPEAKER presented a memorial of the General Assembly of the Commonwealth of Virginia, relative to a balanced budget requirement and Presidential line-item veto; to the Committee on the Judiciary.

## ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. SMITH of Michigan.

H.R. 42: Mr. ACKERMAN, Mr. SERRANO, Mr. BECERRA, and Ms. VELAZQUEZ.

H.R. 70: Mr. STENHOLM.

H.R. 104: Ms. FURSE.

H.R. 151: Mr. MCHUGH.

H.R. 157: Mr. BURR.

H.R. 218: Mr. HASTINGS of Washington.

H.R. 246: Mr. ZIMMER.

H.R. 253: Mr. FILNER, Mr. GALLEGLY, Mr. MARTINEZ, and Ms. PELOSI.

H.R. 312: Mr. INGLIS of South Carolina and Mr. WELLER.

H.R. 345: Mr. BREWSTER and Mr. STOCKMAN.

H.R. 354: Mr. SKEEN.

H.R. 371: Mr. SOLOMON and Mr. WILLIAMS.

H.R. 372: Mr. ROHRBACHER.

H.R. 373: Mr. EWING and Mr. PARKER.

H.R. 408: Mr. FRANKS of Connecticut.

H.R. 426: Mrs. CHENOWETH, Mr. LIPINSKI, and Mr. CALVERT.

H.R. 427: Mrs. SEASTRAND, Mr. ROYCE, Mr. BREWSTER, Mr. HOSTETTLER, and Mr. CRAPO.  
 H.R. 438: Mr. BILBRAY, Mr. FOLEY, and Mr. NORWOOD.  
 H.R. 485: Mr. PARKER.  
 H.R. 556: Mr. TEJEDA, Mr. ORTIZ, and Mr. BENTSEN.  
 H.R. 557: Mr. TEJEDA, Mr. ORTIZ, and Mr. BENTSEN.  
 H.R. 569: Mr. BERMAN.  
 H.R. 570: Mr. LIPINSKI, Mr. FAZIO of California, Mr. PETRI, Mr. FROST, and Mr. SAXTON.  
 H.R. 580: Mr. TATE.  
 H.R. 733: Mr. UPTON, Ms. RIVERS, and Mr. HINCHEY.  
 H.R. 734: Mr. UPTON, Ms. RIVERS, and Mr. HINCHEY.  
 H.R. 752: Mr. WHITE and Mr. CHRISTENSEN.  
 H.R. 759: Mr. GUTKNECHT.  
 H.R. 783: Mr. STUPAK and Mr. POMEROY.  
 H.R. 789: Mr. EWING, Mr. THORNBERRY, Mr. SOUDER, and Mr. TORRICELLI.  
 H.R. 849: Mr. BROWN of Ohio and Mr. DURBIN.  
 H.R. 873: Mr. GILLMOR, Mr. ZELIFF, Mr. POSHARD, and Mr. SANFORD.  
 H.R. 910: Mr. THOMPSON, Mr. UNDERWOOD, Mr. MINGE, Mr. HINCHEY, and Mr. FATTAH.  
 H.R. 928: Mr. LIPINSKI, Mr. GORDON, and Mr. MCHUGH.  
 H.R. 959: Mr. BEILENSEN.  
 H.R. 963: Mr. MILLER of Florida, Mr. PETERSON of Florida, Mr. STEARNS, Mr. BENTSEN, Mr. BARRETT of Wisconsin, and Mr. MCHUGH.  
 H.R. 1005: Mr. WELDON of Florida, Mr. JONES, Mr. WELLER, Mr. BLUTE, Mrs. CHENOWETH, and Mr. CALVERT.  
 H.R. 1021: Mr. LIPINSKI.  
 H.R. 1023: Mr. OLVER.  
 H.R. 1024: Mr. MCKEON.  
 H.R. 1058: Mr. KLUG and Mr. FRISA.  
 H.R. 1093: Mr. MINGE and Mr. BAESLER.  
 H.R. 1114: Mr. WYDEN.  
 H.R. 1118: Mr. EMERSON, Mr. DORNAN, Mr. CHRISTENSEN, and Mrs. CHENOWETH.  
 H.J. Res. 56: Mr. LIPINSKI.  
 H.J. Res. 61: Mr. EMERSON, Mr. MCINTOSH, and Mr. TIAHRT.  
 H. Con. Res. 12: Mr. LAUGHLIN, Ms. BROWN of Florida, and Mr. DIAZ-BALART.  
 H. Con. Res. 31: Mr. FRANKS of Connecticut, Mr. MANTON, Mr. DIAZ-BALART, Mr. DELUMS, Ms. LOFGREN, and Ms. FURSE.  
 H. Res. 24: Mr. FORBES, Mr. LAHOOD, Mr. CUNNINGHAM, Mr. WICKER, Mr. SAXTON, Mr. ROHRBACHER, Mr. ENGLISH of Pennsylvania, and Mr. BAKER of Louisiana.  
 H. Res. 30: Mr. TATE, Mr. CLYBURN, Mr. STUDDS, Mr. HINCHEY, and Mr. PARKER.

**DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS**

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.J. Res. 2: Mr. BROWNBACK and Mrs. MYRICK.

**AMENDMENTS**

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1058

OFFERED BY: MR. BRYANT

AMENDMENT No. 2: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

**SEC. 6. INAPPLICABILITY TO DERIVATIVES.**

This Act and the amendments made by this Act shall not apply to any action based on an allegation of fraud in connection with

the purchase or sale of a derivative instrument. For purposes of this section, the term "derivative instrument" means any financial contract or other instrument that derives its value from the value or performance of any security, currency exchange rate, or interest rate (or group or index thereof), but does not include—

(1) any security that is traded on a national securities exchange or on an automated interdealer quotation system sponsored by a securities association registered under section 15A of this title;

(2) any forward contract which has a maturity at the time of issuance not exceeding 270 days;

(3) any contract of sale of a commodity for future delivery, or any option on such a contract, traded or executed on a designated contract market and subject to regulation under the Commodity Exchange Act; or

(4) any deposit held by a financial institution.

H.R. 1058

OFFERED BY: MR. BRYANT

AMENDMENT No. 3: Page 18, beginning on line 6, strike subsections (b) and (c) and insert the following (and redesignate the succeeding subsections accordingly):

"(b) PLEADING REQUIREMENT.—In any action arising under this title in which the plaintiff may recover money damages only if it proves that the defendant acted with scienter, the plaintiff must allege in its complaint facts suggesting that the defendant acted with that state of mind.

H.R. 1058

OFFERED BY: MR. COX

AMENDMENT No. 4: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

**SEC. 6. AMENDMENT TO RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT.**

Section 1964(c) of title 18, United States Code, is amended by inserting " , except that no person may bring an action under this provision if the racketeering activity, as defined in section 1961(1)(D), involves conduct actionable as fraud in the purchase or sale of securities" before the period.

H.R. 1058

OFFERED BY: MR. DINGELL

AMENDMENT No. 5: Page 18, beginning on line 2, strike "For example, a defendant who genuinely forgot to disclose, or to whom disclosure did not come to mind, is not reckless."

H.R. 1058

OFFERED BY: MS. ESHOO

AMENDMENT No. 6: Page 17, beginning on line 18, strike paragraph (4) and insert the following:

"(4) RECKLESSNESS.—For purposes of paragraph (1), a defendant makes a fraudulent statement recklessly if, in making such statement, the defendant engaged in conduct (i) that was highly unreasonable, involving not merely simple or even inexcusable negligence, but an extreme departure from standards of ordinary care, and (ii) that presented a danger of misleading investors that was either known to the defendant or so obvious that the defendant must have been aware of it.

H.R. 1058

OFFERED BY: MR. KENNEDY OF MASSACHUSETTS

AMENDMENT No. 7: Page 24, line 13, strike "No defendant" and all that follows through line 16, and after line 21, insert the following new paragraph (and redesignate the succeeding paragraph accordingly):

"(4) UNCOLLECTIBLE SHARES.—If, upon motion made not later than 6 months after a

final judgment is entered, the court determines that all or part of a defendant's share of the damages is uncollectible, the remaining defendants shall be jointly and severally liable for the uncollectible share. A share of damages is uncollectible if the court finds that—

"(A) the defendant is, or is in imminent danger of becoming, bankrupt or insolvent;

"(B) the defendant is, or is likely to be, subject to either State or Federal criminal proceedings that raise a reasonable doubt about the defendant's ability to proceed as a going concern; or

"(C) the defendant is, or the principals thereof, pose a risk of fleeing the country to avoid prosecution, or are attempting to transfer the defendant's assets outside the United States to avoid satisfying a judgment reached under this title.

H.R. 1058

OFFERED BY: MR. MANTON

AMENDMENT No. 8: Page 7, beginning on line 19, strike subsection (c) through page 11, line 8, and insert the following:

"(c) AWARDS OF FEES AND EXPENSES.—

"(1) AUTHORITY TO AWARD FEES AND EXPENSES.—If the court in any private action arising under this title enters a final judgment against a party litigant on the basis of a default, a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether—

"(A) The complaint or motion is being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

"(B) the claims, defenses, and other legal contentions in the complaint or motion, taken as a whole, are unwarranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

"(C) the allegations and other factual contentions in the complaint or motion, taken as a whole, lack any evidentiary support or would be likely to lack any evidentiary support after a reasonable opportunity for further investigation or discovery; or

"(D) the denials of factual contentions are unwarranted on the evidence or are not reasonably based on a lack of information or belief.

"(2) AWARD TO PREVAILING PARTY.—If the court determines that the losing party has violated any subparagraph of paragraph (1), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the losing party violated any such subparagraph shall be made on the basis of the record in the civil action for which fees and other expenses are sought.

"(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

"(4) SANCTIONS AGAINST ATTORNEY.—The court—

"(A) shall award the fees and expenses against the attorney for the losing party unless the court determines that the losing party was principally responsible for the actions described in subparagraph (A), (B), (C), or (D) of paragraph (1); and

“(B) may, in its discretion, reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy.

“(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

“(6) DEFINITIONS.—For purposes of this subsection, the term ‘fees and other expenses’ includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party’s case, and reasonable attorney fees and expenses. The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of services furnished.

H.R. 1058

OFFERED BY: MR. MARKEY

AMENDMENT NO. 9: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

**SEC. 6. AUTHORITY OF SEC TO PROSECUTE AIDING AND ABETTING.**

Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended—

(1) by striking the heading of such section and inserting the following:

“LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID OR ABET VIOLATIONS”; and

(2) by adding at the end the following new subsection:

“(e) PROSECUTION OF PERSONS WHO AID OR ABET VIOLATIONS.—For purposes of actions by the Commission pursuant to subsections (d)(1) and (d)(3) of section 21, any person who knowingly or recklessly provides substantial assistance to another person in the violation of a provision of this title, or of any rule or regulation thereunder, shall be deemed to violate such provision and shall be liable to the same as the person to whom such assistance is provided.”.

H.R. 1058

OFFERED BY: MR. MINETA

AMENDMENT NO. 10: Page 26, beginning on line 1, strike section 37 through page 28, line 2, and insert the following:

**“SEC. 37. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.**

“(A) SAFE HARBOR IN GENERAL.—In any private action arising under this title based on a fraudulent statement (as defined in section 10A), a person shall not be liable with respect to any forward-looking statement if and to the extent that the statement—

“(1) contains a projection, estimate, or description of future events; and

“(2) refers clearly (or is understood by the recipient to refer) to—

“(A) such projections, estimates, or descriptions as forward-looking statements; and

“(B) the risk that such projections, estimates, or descriptions may not be realized.

The safe harbor for forward-looking statements established under this subsection shall be in addition to any safe harbor the Commission may establish by rule or regulation.

“(b) DEFINITION OF FORWARD-LOOKING STATEMENT.—For the purpose of this section, the term ‘forward-looking statement’ shall include (but not be limited to) projections, estimates, and descriptions of future events, whether made orally or in writing, voluntarily or otherwise.

“(c) NO DUTY TO MAKE CONTINUING PROJECTIONS.—In any private action arising under this title, no person shall be deemed to have any obligation to update a forward-looking

statement made by such person unless such person has expressly and substantially contemporaneously undertaken to update such statement.

“(d) AUTOMATIC PROCEDURE FOR STAYING DISCOVERY; EXPEDITED PROCEDURE FOR CONSIDERATION OF MOTION ON APPLICABILITY OF SAFE HARBOR.—

“(1) STAY PENDING DECISION ON MOTION.—Upon motion by a defendant to dismiss on the ground that the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section and that the safe harbor provisions of this section preclude a claim for relief, the court shall stay discovery until such motion is decided.

“(2) PROTECTIVE ORDERS.—If the court denies a motion to dismiss to which paragraph (1) is applicable, or if no such motion is made and a party makes a motion for a protective order, at any time beginning after the filing of the complaint and ending 10 days after the filing of such party’s answer to the complaint, asserting that the safe harbor provisions of this section apply to the action, a protective order shall issue forthwith to stay all discovery as to any party to whom the safe harbor provisions of this section may apply, except that which is directed to the specific issue of the applicability of the safe harbor. A hearing on the applicability of the safe harbor shall be conducted within 45 days of the issuance of the protective order. At the conclusion of the hearing, the court shall either dismiss the portion of the action based upon the use of the forward-looking information or determine that the safe harbor is unavailable in the circumstances.

“(e) REGULATORY AUTHORITY.—The Commission shall exercise its authority to describe conduct with respect to the making of forward-looking statements that will be deemed not to provide a basis for liability in private actions under this title. Such rules and regulations shall—

“(1) include clear and objective guidance that the Commission finds sufficient for the protection of investors;

“(2) prescribe such guidance with sufficient particularity that compliance shall be readily ascertainable by issuers prior to issuance of securities; and

“(3) provide that forward-looking statements that are in compliance with such guidance and that concern the future economic performance of an issuer of securities registered under section 12 of this title will be deemed not to be in violation of this title.

Nothing in this section shall be deemed to limit, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under other statutes under which the Commission exercises rule-making authority.”.

H.R. 1058

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 11: Page 8, line 20, strike the word “shall” and substitute “may”.

H.R. 1058

OFFERED BY: MR. WATT OF NORTH CAROLINA

AMENDMENT NO. 12: Page 16, line 23, after the semicolon, add “and”.

Page 16, strike lines 24 and 25 in the entirety and redesignate the subsequent subsection accordingly.

H.R. 1058

OFFERED BY: MR. WYDEN

AMENDMENT NO. 13: Page 28, after line 2, insert the following new section (and redesignate the succeeding sections and conform the table of contents accordingly):

**SEC. 6. FINANCIAL FRAUD DETECTION AND DISCLOSURE.**

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended by inserting after section 13 (15 U.S.C. 78m) the following new section:

**“SEC. 13A. FRAUD DETECTION AND DISCLOSURE.**

“(a) AUDIT REQUIREMENTS.—Each audit required pursuant to this title of an issuer’s financial statements by an independent public accountant shall include, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission, the following:

“(1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts;

“(2) procedures designed to identify related party transactions which are material to the financial statements or otherwise require disclosure therein; and

“(3) an evaluation of whether there is substantial doubt about the issuer’s ability to continue as a going concern over the ensuing fiscal year.

“(b) REQUIRED RESPONSE TO AUDIT DISCOVERIES.—

“(1) INVESTIGATION AND REPORT TO MANAGEMENT.—If, in the course of conducting any audit pursuant to this title to which subsection (a) applies, the independent public accountant detects or otherwise becomes aware of information indicating that an illegal act (whether or not perceived to have a material effect on the issuer’s financial statements) has or may have occurred, the accountant shall, in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission—

“(A)(i) determine whether it is likely that an illegal act has occurred, and (ii) if so, determine and consider the possible effect of the illegal act on the financial statements of the issuer, including any contingent monetary effects, such as fines, penalties, and damages; and

“(B) as soon as practicable inform the appropriate level of the issuer’s management and assure that the issuer’s audit committee, or the issuer’s board of directors in the absence of such a committee, is adequately informed with respect to illegal acts that have been detected or otherwise come to the attention of such accountant in the course of the audit, unless the illegal act is clearly inconsequential.

“(2) RESPONSE TO FAILURE TO TAKE REMEDIAL ACTION.—If, having first assured itself that the audit committee of the board of directors of the issuer or the board (in the absence of an audit committee) is adequately informed with respect to illegal acts that have been detected or otherwise come to the accountant’s attention in the course of such accountant’s audit, the independent public accountant concludes that—

“(A) any such illegal act has a material effect on the financial statements of the issuer,

“(B) senior management has not taken, and the board of directors has not caused senior management to take, timely and appropriate remedial actions with respect to such illegal act, and

“(C) the failure to take remedial action is reasonably expected to warrant departure from a standard auditor’s report, when made, or warrant resignation from the audit engagement,

the independent public accountant shall, as soon as practicable, directly report its conclusions to the board of directors.

“(3) NOTICE TO COMMISSION; RESPONSE TO FAILURE TO NOTIFY.—An issuer whose board

of directors has received a report pursuant to paragraph (2) shall inform the Commission by notice within one business day of receipt of such report and shall furnish the independent public accountant making such report with a copy of the notice furnished the Commission. If the independent public accountant making such report shall fail to receive a copy of such notice within the required one-business-day period, the independent public accountant shall—

“(A) resign from the engagement; or

“(B) furnish to the Commission a copy of its report (or the documentation of any oral report given) within the next business day following such failure to receive notice.

“(4) REPORT AFTER RESIGNATION.—An independent public accountant electing resignation shall, within the one business day following a failure by an issuer to notify the Commission under paragraph (3), furnish to the Commission a copy of the accountant's report (or the documentation of any oral report given).

“(c) AUDITOR LIABILITY LIMITATION.—No independent public accountant shall be liable in a private action for any finding, conclusion, or statement expressed in a report made pursuant to paragraph (3) or (4) of subsection (b), including any rules promulgated pursuant thereto.

“(d) CIVIL PENALTIES IN CEASE-AND-DESIST PROCEEDINGS.—If the Commission finds, after notice and opportunity for hearing in a proceeding instituted pursuant to section 21C of this title, that an independent public accountant has willfully violated paragraph (3) or (4) of subsection (b) of this section, then the Commission may, in addition to entering an order under section 21C, impose a civil penalty against the independent public accountant and any other person that the Commission finds was a cause of such violation. The determination whether to impose a civil penalty, and the amount of any such penalty, shall be governed by the standards set forth in section 21B of this title.

“(e) PRESERVATION OF EXISTING AUTHORITY.—Except for subsection (d), nothing in this section limits or otherwise affects the authority of the Commission under this title.

“(f) DEFINITIONS.—As used in this section, the term ‘illegal act’ means any action or omission to act that violates any law, or any rule or regulation having the force of law.”

“(b) EFFECTIVE DATES.—As to any registrant that is required to file selected quarterly financial data pursuant to item 302(a) of Regulation S-K (17 CFR 229.302(a)) of the Securities and Exchange Commission, the amendments made by subsection (a) of this section shall apply to any annual report for any period beginning on or after January 1, 1996. As to any other registrant, such amendment shall apply for any period beginning on or after January 1, 1997.

H.R. 988

OFFERED BY: MR. BURTON OF INDIANA

AMENDMENT No. 8: In section 2, page 4, line 1, insert at the beginning of the line: “25 percent”.

And on line 5, strike the period, insert a coma and add the following new language “, or the Court may increase the percentage above the 25% if in the opinion of the Court the offeror was not reasonable in accepting the last offer.”

H.R. 988

OFFERED BY: MS. HARMAN

AMENDMENT No. 9: Strike section 2 of the bill, and insert the following:

**SEC. 2. AWARD OF COSTS AND ATTORNEY'S FEES IN FEDERAL CIVIL DIVERSITY LITIGATION.**

Section 1332 of title 28, United States Code, is amended by adding at the end the following:

“(e) AWARDS OF FEES AND EXPENSES.—

“(1) AUTHORITY TO AWARD FEES AND EXPENSES.—In any action over which the court has jurisdiction under this section, if the court enters a final judgment against a party litigant on the basis of a motion to dismiss, motion for summary judgment, or a trial on the merits, the court shall, upon motion by the prevailing party, determine whether (A) the position of the losing party was not substantially justified, (B) imposing fees and expenses on the losing party or the losing party's attorney would be just, and (C) the cost of such fees and expenses to the prevailing party is substantially burdensome or unjust. If the court makes the determinations described in clauses (A), (B), and (C), the court shall award the prevailing party reasonable fees and other expenses incurred by that party. The determination of whether the position of the losing party was substantially justified shall be made on the basis of the record in the action for which fees and other expenses are sought, but the burden of persuasion shall be on the prevailing party.

“(2) SECURITY FOR PAYMENT OF COSTS IN CLASS ACTIONS.—In any private action arising under this section that is certified as a class action pursuant to the Federal Rules of Civil Procedure, the court shall require an undertaking from the attorneys for the plaintiff class, the plaintiff class, or both, in such proportions and at such times as the court determines are just and equitable, for the payment of the fees and expenses that may be awarded under paragraph (1).

“(3) APPLICATION FOR FEES.—A party seeking an award of fees and other expenses shall, within 30 days of a final, nonappealable judgment in the action, submit to the court an application for fees and other expenses that verifies that the party is entitled to such an award under paragraph (1) and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing on behalf of the party stating the actual time expended and the rate at which fees and other expenses are computed.

“(4) ALLOCATION AND SIZE OF AWARD.—The court, in its discretion, may—

“(A) determine whether the amount to be awarded pursuant to this subsection shall be awarded against the losing party, its attorney, or both; and

“(B) reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the action.

“(5) AWARDS IN DISCOVERY PROCEEDINGS.—In adjudicating any motion for an order compelling discovery or any motion for a protective order made in any action over which the court has jurisdiction under this section, the court shall award the prevailing party reasonable fees and other expenses incurred by the party in bringing or defending against the motion, including reasonable attorneys' fees, unless the court finds that special circumstances make an award unjust.

“(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit or impair the discretion of the court to award costs pursuant to other provisions of law.

“(7) PROTECTION AGAINST ABUSE OF PROCESS.—In any action to which this subsection applies, a court shall not permit a plaintiff to withdraw from or voluntarily dismiss such action if the court determines that such withdrawal or dismissal is taken for purposes of evasion of the requirements of this subsection.

“(8) DEFINITIONS.—For purposes of this subsection—

“(A) The term ‘fees and other expenses’ includes the reasonable expenses of expert wit-

nesses, the reasonable cost of any study, analysis, report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorneys' fees and expenses. The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of services furnished.

“(B) The term ‘substantially justified’ shall have the same meaning as in section 2412(d)(1) of title 28, United States Code.”

H.R. 988

OFFERED BY: MR. MCHALE

AMENDMENT No. 10: After section 4, insert the following:

**SEC. 5. FRIVOLOUS ACTIONS.**

(a) GENERAL RULE.—

(1) SIGNING OF COMPLAINT.—The signing or verification of a complaint in all civil actions in Federal court constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the action is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, an action is frivolous if the complaint is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and brought for any improper purpose.

(B) For purposes of subparagraph (A), the term “groundless” means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT AN ACTION IS FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 90 days after the date the complaint in any action in a Federal court is filed, the defendant to the action may make a motion that the court determine if the action is frivolous.

(2) COURT ACTION.—The court in any action in Federal court shall on the motion of a defendant or on its own motion determine if the action is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether an action is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that the action is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the complaint and the attorney of record. The sanction shall include the following—

(1) the striking of the complaint;

(2) the dismissal of the party; and

(3) an order to pay to the defendant the amounts of the reasonable expenses incurred because of the filing of the action, including costs, witness fees, fees of experts, discovery expenses, and reasonable attorney's fees calculated on the basis of an hourly rate which may not exceed that which the court considers acceptable in the community in which the attorney practices law, taking into account the attorney's qualifications and experience and the complexity of the case, except

that the amount of expenses which may be ordered under this paragraph may not exceed—

(A) the actual expenses incurred by the plaintiff because of the filing of the action; and

(B) to the extent that such expenses were not incurred because of a contingency agreement, the reasonable expenses that would have been incurred in the absence of the contingency agreement.

(e) CONSTRUCTION.—For purposes of this section the amount requested for damages in

a complaint does not constitute a frivolous action.

Page 7, line 1, strike “SEC. 5.” and insert “SEC. 6.”.

Page 7, line 7, strike “The” and insert “Section 5 and the”.

H.J. RES. 2

OFFERED BY: MRS. FOWLER

AMENDMENT NO. 1: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the Unit-

ed States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

“ARTICLE —

“No person may serve more than four consecutive terms as Representative or two consecutive terms as Senator, not counting any term that began before the adoption of this article of amendment.”.