SLOWING GROWTH IS A CUT

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

Ms. RIVERS. Mr. Speaker, throughout the course of this week we have seen a $1 million check come to the floor several times, along with a challenge that if anyone can prove that the Republicans are actually proposing to cut Medicare, they can win this check. Well, I learned in law school that if you want to define something, you go back to the precedent.

The precedent in 1994 set by that side of the aisle when exactly the same kind of adjustment was proposed for $120 billion less was that slowing growth is a cut. All of the minority Members, all of the Republican members on the Committee on Ways and Means called it a cut, massive cut. Subcommittee chair CLAY SHAW called it ''destructive Medicare cuts.''

Now, look, folks, you set the standard. You decided that slowing growth was a cut. So one of two things is true: Either the Republicans did not fairly characterize the 1994 debate about slowing growth, or the RNC has to pay up its $1 million. But do not give it to me. Put it on the deficit, OK?

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, the pending business is the question of agreeing to the Speaker's approval of the journal.

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

Mr. LAHOOD. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 280, nays 78, not voting 75, as follows:

[Roll No. 880]

YEAS—280

Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baldacci
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Beilenson
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Boucher
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Camp
Campbell
Canady
Cardin
Castle
Chabot
Christensen
Chrysler
Clayton
Clement
Clinger
Coble
Collins (GA)
Combest
Condit
Cooley
Cox
Coyne
Crapo
Cremeans
Cunningham
Danner
Davis
de la Garza
Deal
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Eshoo
Ewing
Farr
Fawell
Fields (LA)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gejdenson
Gekas
Geren
Gilchrest
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Greenwood
Gunderson
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Johnson (CT)
Johnson (SD)
Johnston
Jones
Kanjorski
Kelly
Kennedy (MA)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaHood
Largent
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Lowey
Lucas
Luther
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
Meehan
Metcalf
Meyers
Mica
Miller (FL)
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Pastor
Paxon
Payne (VA)
Pelosi
Peterson (MN)
Petri
Portman
Pryce
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Richardson
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Roth
Roukema
Royce
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schiff
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Studds
Stump
Stupak
Talent
Tate
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
White
Whitfield
Wicker
Yates
Young (FL)
Zeliff

NAYS—78

Abercrombie
Barcia
Becerra
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Clay
Clyburn
Coburn
Coleman
Collins (IL)
Costello
Dellums
Durbin
Engel
Ensign
Evans
Everett
Flake
Foglietta
Frank (MA)
Frost
Furse
Gephardt
Gillmor
Gutierrez
Gutknecht
Hastings (FL)
Hefley
Hefner
Heineman
Hilleary
Hilliard
Hinchey
Johnson, E. B.
Kennedy (RI)
Latham
Levin
Lewis (GA)
Longley
Maloney
Markey
Martinez
McNulty
Menendez
Miller (CA)
Obey
Olver
Orton
Pallone
Payne (NJ)
Peterson (FL)
Pickett
Pomeroy
Poshard
Roybal-Allard
Rush
Sabo
Scott
Skaggs
Stockman
Stokes
Tanner
Taylor (MS)
Thompson
Velazquez
Vento
Visclosky
Volkmer
Waters
Watt (NC)
Wise
Wolf
Woolsey
Wynn
Zimmer

NOT VOTING—75

Ackerman
Baker (LA)
Bentsen
Brewster
Bryant (TX)
Callahan
Calvert
Chambliss
Chapman
Chenoweth
Collins (MI)
Conyers
Cramer
Crane
Cubin
DeFazio
Doolittle
Dornan
Edwards
Fattah
Fazio
Fields (TX)
Filner
Ford
Gibbons
Graham
Green
Hall (OH)
Harman
Hayes
Herger
Houghton
Jacobs
Jefferson
Johnson, Sam
Kaptur
Kasich
LaFalce
Lantos
LaTourette
Laughlin
Lincoln
Lipinski
Lofgren
Manton
Manzullo
McCollum
McCrery
Meek
Mfume
Myers
Oberstar
Owens
Parker
Pombo
Porter
Quillen
Quinn
Riggs
Ros-Lehtinen
Rose
Schaefer
Schroeder
Serrano
Smith (TX)
Stark
Tauzin
Torricelli
Towns
Waxman
Weller
Williams
Wilson
Wyden
Young (AK)

☐ 0952

Mr. OLVER changed his vote from ''yea'' to ''nay.''

So the Journal was approved.

The result of the vote was announced as above recorded.

PROVIDING FOR CONSIDERATION OF HOUSE RESOLUTION 299, AMENDING HOUSE RULES TO PLACE LIMITATIONS ON COPYRIGHT ROYALTY INCOME FOR HOUSE MEMBERS, OFFICERS AND EMPLOYEES

Mr. SOLOMON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 322, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 322

Resolved, That upon the adoption of this resolution it shall be in order to consider in the House the resolution (H. Res. 299) to amend the Rules of the House of Representatives regarding outside earned income. It shall be in order without intervention of any point of order to consider the motion to amend printed in the report of the Committee on Rules accompanying this resolution only if offered by the chairman of the Committee on Rules. The resolution and the motion to amend shall be debatable for thirty minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Rules. The previous question shall be considered as ordered on the motion to amend and on the resolution to its adoption without further intervening motion.

The SPEAKER pro tempore (Mr. BEREUTER). The gentleman from New York [Mr. SOLOMON] is recognized for 1 hour.

Mr. SOLOMON. Mr. Speaker, for the purposes of debate only, I yield 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], my very good friend, pending which I yield myself such time as I may consume. Mr. Speaker, during consideration of the resolution, all time yielded is for debate purposes only.

(Mr. SOLOMON asked and was given permission to revise and extend his remarks, and include therein extraneous material.)

Mr. SOLOMON. Mr. Speaker, I would advise Members that they really ought to listen up. This is a question of whether Members are going to be treated as American citizens or as second-class citizens. This rule makes in order House Resolution 299, amending House rules to place limits on royalty income that House Members, officers, and high-level staff may receive in any given year.

Mr. Speaker, the rule provides for consideration in the House, and makes in order without intervening points of order, a motion to amend printed in the report on this rule only if offered by myself. The resolution and substitute will be debated for 30 minutes, to be equally divided between the chairman and ranking minority member of the Committee on Rules.

The previous question will be considered as ordered on the motion to amend and on the resolution to final adoption.

Mr. Speaker, I do not want to take substantial time explaining the history of the resolution this rule makes in order, as brief as that history may be. The resolution was introduced on December 12 by the gentlwoman from Connecticut [Mrs. JOHNSON], chairwoman of the Committee on Standards of Official Conduct, by the direction of her committee as part of her report on the Speaker.

In a letter to me on December 13, the gentlewoman from Connecticut required that the Committee on Rules consider House Resolution 299, her resolution, as soon as possible, and to report it to the floor quickly so that it may be approved by the House before the end of the year, the end of the year being about 1 week from now.

Mr. Speaker, while the Committee on Rules did not have time to conduct proper hearings and proper deliberations on the resolution, and formerly report it as we normally would do with resolutions reported by committees of jurisdiction, it was decided by our committee, as a matter of courtesy to the gentlewoman from Connecticut and to the entire Committee on Standards of Official Conduct, to honor the commitment gentleman made to have a vote this year.

Mr. Speaker, I have made clear my own opposition to this resolution's central thrust, which is to bring royalty income for the first time under the outside earned income cap, which is to bring royalty income for the first time under the outside earned income cap, which is now $20,040. In my opinion, a book is an author's intellectual property and any royalties are returned on that property. If Members think about that for a minute, that is now the Committee on Standards of Official Conduct has treated royalties up to this point.

Mr. Speaker, let me just quote from page 94 of the most recent edition of the ''House Ethics Manual.''

□ 1000

This is our manual:

House rule XLVII has long exempted book royalties from outside earned income restrictions, royalties being deemed a return on the author's intellectual property, akin to other investment income.

That is like your home, that is like your stocks and your bonds, that is your personal property. Intellectual property is no different.

The Johnson resolution before us today would change that definition of royalties by calling them earned income rather than unearned income and thereby force Members to refuse any returns on their intellectual property investment that exceeds $20,000. In my opinion, that is absolutely wrong because royalty income does not present an ethical problem either in terms of posing a conflict of interest or of interfering with the time a Member devotes to his or her official office, and that is really what this is all about. Think about that.

The House ethics manual favorably cites a Senate Ethics Committee report on this point as follows, and I quote, and again you ought to listen carefully to this: ''If an individual writes a book and it becomes a best seller, any royalties received are beyond his or her direct control. It is income which is, in effect, a return on a prior investment of time and energy.''

Mr. Speaker and Members, the substitute that I intend to offer would retain the current exemptions of royalty income from outside earned income limitations. However, exactly like the Johnson resolution, my substitute would prohibit any advances on any royalty income for contracts entered into on or after January 1, 1996, and that is 1 week from now.

Mr. Speaker and Members of this House, now a strong case can be made that advances on royalties might be perceived as inappropriate or as posing a potential conflict since there is no way to know how much royalty income might be generated by the sale of a book. If a Member, for instance, received a $100,000 advance and the book did not sell, that means the book, the intellectual property, really was not worth anything. So he or she would receive a windfall on something that was worthless, called worthless property. To prevent that from happening, the Solomon substitute bans all advances. I think that is fair because it gets rid of that possible perception.

This is consistent with the rules that exist in the executive branch in all of the departments of Government. At present, the President of the United States, the Vice President, Cabinet members, and Presidential appointees may not receive any advances on royalty at the income, and that is exactly what we are doing. We are conforming to that regulation. Other noncareer executive branch employees may receive advances within the 15-percent cap unearned income.

My substitute would put Members of this House under the identical rule that now applies to the President, the Vice President, the Cabinet members, to Presidential employees; that is, they may receive no advances but they may receive royalties based on the sale of a book at whatever that market price might be.

Moreover, like the Johnson resolution, my substitute would require that any contracts entered into on or after January, 1996, 1 week from today, must receive the prior approval of the Ethics Committee as complying with the current House rule that the contracts be with established publishers; that is important, pursuant to usual and customary terms. That means that Members could not receive some kind of windfall because of the office they have or some kind of clout that they might have.

So, in conclusion, Mr. Speaker, and I think you ought to listen carefully to this because these are your choices on this floor today: Members have these three choices:

The Johnson resolution that restricts royalty income and bans advances. That is what her resolution does.

The Solomon substitute that bans advances but permits royalty income. That is what my resolution does.

Or, if both of these fail, if my substitute goes down and the Johnson resolution does not pass, we go back to the current House rule that permits advances and unlimited royalties.

Those are the three choices of this body, Members.

I am just going to tell you something. You know, we come under a great deal of criticism sometimes. People talk about the perks of this Congress and the large salaries that we have. But I am going to tell you something, you know, when I came to this Congress, I had a business, I had several businesses, and I had to sell them, and I had five teenage children I had to put through college at the time. Because of the situation where I was forced by the ethics rules at that time to sell my businesses, I had to sell them for about half of what they were worth. Today those businesses are worth several millions of dollars, and I received about $300,000, maybe a little less at that time.

That money is all gone because I used it to educate all my five children. But, you know, when we retire, when I retire, you know, they say we have great pensions. I will take that pension and maybe my wife and I, if we live another 5 or 6 or 10 years after that, in other words, we will enjoy whatever those pension benefits were.

But think about this, when I am gone and she is gone, where is the estate for your family? I have given up several million dollars by coming and serving in this body. You might say, ''Well, you asked for it, Mr. SOLOMON.'' That is true. But the truth is, when you talk about intellectual property and I look at the gentlewoman from Texas [Ms. JACKSON-LEE] sitting there, I look at a lot of Members, you have a lot of wisdom, you have a lot of knowledge. That is yours. You have accumulated it over

a lifetime. This is not something that we are taking advantage of or making exceptions to. These are reasonable intellectual properties that we have developed over time. It belongs to you, and you ought to be able to use that intellectual property as you see fit.

Mr. CARDIN. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Maryland, a very respected member of the Committee on Standards of Official Conduct, an outstanding Member of this body.

Mr. CARDIN. I appreciate how sincere the gentleman is on the points concerning intellectual property. Is the gentleman aware we are only dealing with book royalties? All other forms of intellectual property returns are currently subject to the outside earned income limits. The only exception today is dealing with book royalties, not with intellectual property generally.

Mr. SOLOMON. That is exactly right. My good friend, when this debate continues, you are going to find concerns. We have a lot of concerns, and I will talk about them a little bit later on.

But, you know, there are such thing as property, not intellectual property but property such as stocks and bonds, investment properties that bring in dividends to Members. You know, maybe if we are going to begin to go down this road, this brings up serious questions. You know, we vote on defense contracts around here, we vote on telecommunications; there are a lot of things that, if we are going down this road, you are going to be making this body second-class citizens. I would predict if this goes down this road today, that you are going to see nothing in this body 10 years from now but millionaires or political hacks, one or the other. And that is not what this country needs. You need all of the intellectual expertise from out of the private sector that you can get, whether it is lawyers or doctors, professors, businessmen. We need to let them know that we are not going to throw these stumbling blocks up to them. They are just like everybody in this body. I would say that 99 percent of every man and woman in this body have the greatest integrity. Sure, there is a bad apple. I come from apple growing areas. You will find one or two in a barrel. But let us not demean this body. Let us keep us as normal American citizens and treat us the same.

COMMITTEE ON RULES—REPUBLICAN BILL SUMMARY

H. RES. 299—HOUSE COPYRIGHT ROYALTY RULE

Purpose: The purpose of H. Res. 299 is to amend House rule XLVII (''Limitations on Outside Employment and Earned Income'') to place limits on book royalty income for Members, officers and top-level employees of the House.

Background and Legislative History: On December 12, 1995, Representative Nancy Johnson of Connecticut, chairman of the House Committee on Standards of Official Conduct, introduced H. Res. 299, a resolution to amend House Rules regarding outside earned income. The measure was cosponsored by eight other members of the 10-member, bipartisan Standards Committee. The resolution was referred exclusively to the Rules Committee as a matter of original jurisdiction.

The resolution was introduced pursuant to a vote of the Committee in connection with the report it issued on December 12th on the ''Inquiry into Various Complaints Filed Against Representative Newt Gingrich.'' In its report, the Committee found that Representative Gingrich ''did not violate the House Rule governing book contracts or royalty income'' and that ''the book contract was in technical compliance with the 'usual and customary' standard of House rules regarding royalty income.'' However, the Committee went on to indicate that ''the original advance greatly exceeded the financial bounds of any book contract contemplated at the time the current rules were drafted,'' and that it ''strongly questions the appropriateness of what some could describe as an attempt by Representative Gingrich to capitalize on his office.''

Consequently, the Committee recommended in its report that House Rule 47 (''Limitations on Outside Employment and Earned Income'') be changed to subject royalty income derived from books written while one is a Member to the same limits as other sources of outside earned income. A copy of the proposed rule was appended to the report.

The current House Rule XLVII (''Limitations on Outside Employment and Earned Income''), as revised as part of the Ethics Reform Act of 1989 (Public Law 101–194) applies to all Members as well as House officers and employees whose pay is disbursed by the Clerk of the House and exceed the annual rate of basic pay in effect for grade GS–16 of the General Schedule under section 5332 of title 5 of the U.S. Code (currently $81,529), and is employed for more than 90 days in a calendar year. The exception to this definition is the total ban on honoraria which applies to all Members, officers and employees of the House.[1]

Clause 1 of rule XLVII prohibits Members, and officers and employees paid at least $81,529, from receiving outside earned income in excess of 15% of the Executive Level II salary (which is the same as a Member's base pay), or $20,040. Clause 2 prohibits such individuals from receiving any compensation: (1) from affiliation with or employment by any firm, partnership, association, corporation or other entity which provides professional services involving a fiduciary relationship; (2) from practicing a profession that involves a fiduciary relationship; (3) from serving an officer or member of a board of any association, corporation or other entity; or (4) from teaching except by the prior notification and approval of the ethics committee.

Clause 3(e) currently defines outside earned income as ''wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered.'' The current definition goes on to specify certain matters not considered as outside earned income, including: (1) the salary of Members, officers or employees; (2) compensation derived by such individuals for personal services rendered prior to the effective date of the rule (calendar year 1991), or prior to becoming Member, officer, or employee, whichever comes later; (3) amounts paid to a tax-qualified pension, profit-sharing, or stock bonus plan received by such individuals; (4) amounts received by such individuals from services rendered by them in a trade or business in which they or their family holds a controlling interest and in which both personal services and capital are income-producing factors; and (5) ''copyright royalties received from established publishers pursuant to usual and customary contractual terms.''

Thus, under current House Rules, copyright royalties are considered to be unearned rather than earned income. As the most recently published version of the House Ethics Manual puts it:

House Rule 47 has long exempted book royalties from outside earned income restrictions, royalties being deemed a return on the author's intellectual property, akin to other unrestricted returns on property.[2]

Provisions of H. Res. 299: H. Res. 299 would amend clause 3 of rule XLVII as follows:

Copyright royalties earned while a Member, officer or employee would be counted as earned income subject to the outside earned income cap of 15% of a Member's salary.

Copyright royalties for work published before becoming a Member, officer or employee of the House would be exempt from the cap.

Copyright royalties could not be received unless from an ''established publisher pursuant to usual and customary contractual terms'' and unless the contract receives the prior approval of the ethics committee.

Advance payments on royalties would be prohibited to Members, officers or employees but could be made to literary agents, research staff, and other persons working on behalf of the Member, officer or employee.

Contracts providing for a deferral of royalties could not be approved by the ethics committee, though exceptions could be made as deemed appropriate.

The provisions of the rule apply to royalties received after December 31, 1995.

SUMMARY OF SOLOMON SUBSTITUTE FOR H. RES. 299, PROPOSED HOUSE ROYALTIES RULE (RULE XLVII)

Section 1 of the substitute would amend House Rule XLVII (''Limitations on Outside Employment and Earned Income'') by inserting a new clause 3 (treatment of royalty income), and by redesignating the existing clause 3 (definitions) as clause 4. The new clause 3 would contain the following provisions:

Unlimited royalties could still be received by Members, officers and employees under the existing ''usual and customary contractual terms'' standard (by virtue of retention of the existing clause 4(e) exemption of royalties from definition of earned income).

Advances on royalties would be prohibited except for payments to literary agents, researchers, or other individuals working on behalf of the Member, officer or employee on the publication (other than to persons employed by the House or relatives of the Member, officer or employee), and solely for the benefit of the literary agent, researcher or other individual. (underscored provisions are *not* contained in H. Res. 299)

Royalties from contracts entered into on or after Jan. 1, 1996, could not be received without the prior approval of the contract by the ethics committee as being in compliance with the requirement of clause 4(e)(5) that royalties are received ''from and established publisher pursuant to usual and customary contractual terms.''

Provisions would be effective on January 1, 1996 (sec. 2 of substitute).

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[1] The Committee on Standards of Official Conduct has determined that certain matters are excluded from the honorarium ban such as compensation for activities where speaking, appearing or writing is only an incidental part of the work for which payment is made: witness or juror fees; fees to qualified individuals for conducting worship services or religious ceremonies; payments for works of fiction, poetry, lyrics, or script; or payments for performers who appear on stage. House Ethics Manual, 102d Congress, 2d Session, April 1992, pp. 93–94.

[2] Id., p. 94.

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

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

Mr. Speaker, I thank my colleague, the gentleman from New York, for yielding me the customary ½ hour.

Mr. Speaker, like a lot of other Members, I am very glad to see this rule come to the floor today. I will, however, seek to defeat the previous question in order to make sure this resolution stays as it is and is not turned into milque-toast mush by a substitute.

On December 12, the Ethics Committee unanimously voted to issue a report saying, and I quote:

> Existing House rule must be changed to clearly restrict the income a Member may derive from writing books.

The Ethics Committee made a very strong statement in their report. I want to take this time to read a section of the ethics committee report, and I quote:

> Existing rules permit a member to reap significant and immediate financial benefits appearing to be based primarily on his or her position. At a minimum, this creates the impression of exploiting one's office for personal gain. Such a perception is especially troubling when it pertains to the office of the Speaker of the House, a constitutional office requiring the highest standards of ethical behavior.

There you have it Mr. Speaker, the Speaker's book loophole creates the impression of exploiting one's office for personal gain. I say—the sooner we make this change, the better.

Now I do not believe that serious damage hasn't already been done. According to the Washington Post, Speaker GINGRICH has already made 10 times his House salary on this book deal. I'm told that's a total of about $1.7 million. The Ethics Committee obviously thinks we should do something about that and I believe we should accept their recommendation.

Passing this resolution, without weakening it, will change House Rules to include royalty income within the category of outside earned income which is limited to $20,040 a year.

It's a good idea. It's way overdue. And it'll go a long way toward restoring the integrity of this House.

I would remind my colleagues who have been working to put this decision off that the Ethcs Committee unanimously voted to have this begin January 1, every day we wait is another day a Member can earn money that they shouldn't be earning.

I urge my colleagues to defeat the previous question. This House should vote on the Ethics Committee's resolution plain and simple. We shouldn't be making changes designed to enable Members to earn more money than they should be earning. It is wrong now. It was wrong when it started. And it will be wrong in March when the next check is due.

Mr. Speaker, I yield 10 minutes to the gentlewoman from Connecticut [Mrs. JOHNSON], the chairperson of the Committee on Standards of Official Conduct, a Member who has been under a lot of pressure and managed to get all 10 Members of the Committee on Standards of Official Conduct together to agree to the legislation that we are now dealing with.

(Mrs. JOHNSON of Connecticut asked and was given permission to revise and extend her remarks.)

Mrs. JOHNSON of Connecticut. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, as Chair of the Committee on Standards of Official Conduct I rise in strong support of the committee's proposal to bring book royalties within the restrictions that now apply to outside earned income.

Rule 47 of the Rules of the House of Representatives currently restricts the outside income of Members and senior staffers to $20,040 per year. However, the rule's definition of ''outside earned income'' excludes ''copyright royalties received from established publishers pursuant to usual and customary contract terms.'' The Committee on Standards—as has the Senate Ethics Committee—interpreted this exclusion to also cover advances on royalties.

Therefore, current rules permit a Member or senior staffer to earn an unlimited amount of money from book royalties and advances, while subjecting income earned from other outside work to a $20,040 cap. Nor is there any current requirement that book contracts be submitted to the Committee on Standards for approval.

The proposal you will vote on today will end this anomaly. Advances on royalties would be prohibited; copyright royalties would be included in the definition of ''outside earned income,'' thus subjecting them to the $20,040 cap; the new cap would apply only to books sold after December 31, 1995, and then only if the book was published after the author began House service; all book contracts providing for payment to the author must be submitted to the Committee on Standards for approval before any payment may be accepted; and no contract will be approved which provides for deferral of royalty income beyond the year in which earned.

Le me make clear that there will be no restriction on income from any book published before a Member entered the House; there will be no restriction on any advance paid or royalty earned prior to December 31; and any books sold in 1996 or thereafter cannot generate royalty payments to a Member or senior staffer that exceed $20,040, the outside earned income cap.

As you all know, this proposal did not arise in a vacuum; nor is it directed at a particular book or at the finances of a particular Member. Rather, this proposal stems from our review of a number of contracts and is the result of many hours of hearings and deliberations.

We heard from many major publishing houses and through the course of these discussions we became much more familiar with the industry, their practices, their usual royalties, and their negotiation process. Our proposal evolved as we received input from these experts and it is the Ethics Committee's considered judgment as to what is necessary and appropriate to ensure public confidence in our work.

☐ 1015

This proposal to limit income royalty is not novel. Since the Ethics Reform Act of 1989, there has been a cap on all outside earned income except book royalties, and there has been a complete prohibition on receiving compensation for practicing law or other professions involving a fiduciary relationship, as well as on being paid for serving on a board or as an officer of any organization.

Thus, our colleagues who, while Members, work as teachers, dentists, doctors, painters, pilots, taxidermists, clergy, actors, artists, salespersons, or morticians, are all now subject to the same earned income cap that we now propose to place on those of us who write books, while Members of Congress.

What we propose today simply subjects writing for pay to the same restrictions that have governed other activities for years, restrictions that this body imposed in the past so that it would be clear that Members are receiving outside compensation not because of their position, but because of their talents.

I know that some will argue, not unreasonably, that it is unfair to change the rules in mid-stream. In reply, I would note that the Ethics Committee debated this issue fully and concluded that the ethical interests of the House must prevail over the financial interests of a few Members.

I would also point out that, however unfortunate, Members have always had to incur financial setbacks when rules were changed. When the current restrictions were imposed in 1989, the financial interests of many Members were directly affected. Many Members who were lawyers had to forfeit payments altogether; those who served on boards or were officers in organizations could no longer be compensated; and all income—except that of authors—became subject to the cap.

It also will be argued—that the new book rule will unnecessarily restrict the free flow of ideas from Members that wish to contribute to the public debate. But for this very reason—to insure that useful books are still written and published by Members—the proposed rule expressly permits the publisher to compensate those to whom the proceeds of advances are usually directed: the lawyers, agents, fact-checkers, and writers without whom a book could not be published.

If a Member wants to communicate ideas through a book, and can convince a publisher that someone will buy the book, the publisher can pay those upfront expenses usually paid from the

author's advance, the book will be published, and the Member/author can earn $20,040 per year in royalties. Thus, this new rule should not interfere with the free flow of ideas.

Finally, I would like to state as clearly as I can why I have worked hard to bring this proposal directly to the floor of the House, although it is technically within the legislative jurisdiction of the Committee on Rules. I respect my good friend, the distinguished Chairman of the Committee on Rules, and his legitimate substantive and jurisdictional concerns. I also appreciate that the Ethics Committee recommendations usually go to the floor as privileged resolutions pertaining to specific matters of a Member's conduct.

For the Ethics Committee to recommend a change that must go through another legislative committee is unusual; yet our right of direct access to the floor is no less important when we recommend a rule change than when we recommend an action with regard to a Member. We are a bipartisan committee composed of five Republicans and five Democrats. Thus it is fundamental to our independence and the integrity of our process that our recommendations come to the House floor as we write them.

I urge the adoption of House Resolution 299.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from Hawaii [Mr. ABERCROMBIE]. From time to time we have had differences of opinions on some issues, the gentleman is an outstanding Member of this body.

Mr. ABERCROMBIE. Mr. Speaker, I thank the gentleman for yielding time.

Mr. Speaker, friends, I am holding here the House rules and manual of the 104th Congress. Amendment No. 1 of the Constitution of the United States, which is incorporated into our rules, says,

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

You cannot come into the House of Representatives and decide you are bigger than the Constitution of the United States. Now, we all know the origin of this particular issue. I am not taking issue in turn with the motivations of the Committee on Standards of Official Conduct. As a matter of fact, we all know that serving on the Committee on Standards of Official Conduct is about as thankless a task as you can have in the House of Representatives.

I think the Committee on Standards of Official Conduct has taken a pounding over the last several months and tried to come up with a good faith interpretation of what needs to be done, but that does not lessen our obligation to do the right thing by our own rulings and by the Constitution of the United States.

Further, I will say that I think this is here today principally because of arguments that people have had with the Speaker of the House over the arrangements that were made with respect to a book contract that he signed or did not sign or wanted to sign, or whatever it was. That has been argued at length.

I do not think you should make law or rules based on those instances which you think are egregious when it infringes and impedes those elements and principles that you know to be fundamentally right. Why should everybody else be judged by the standard of that person or that instance or that action which you think or you have decided or you have even decreed by virtue of law as being illegal or immoral, or whatever kind ever connotation you want to put on it?

Mr. Speaker, I do not stand here tonight just speaking abstractly, as my good friend the ranking member on the Committee on Standards of Official Conduct knows. I do not want to stand here without saying I have discussed this with members of the Committee on Standards of Official Conduct, the ranking member, because I am the coauthor of a book. I put this book together with a coauthor who forswore his own advance because I did not want to do anything here that I had not already completed and then tried in the marketplace of ideas to see whether anybody wanted to pay any attention to it. So my coauthor went without. I was already making a living. I did not need it.

That is why I think the Solomon amendment makes sense. If we are not willing to do this, I will tell you what I think is actually happening: Put all unearned income in. Why are you picking on the intellectual property or the ability to move an idea forward? Somebody who is a filmmaker, they could not come in here and be able to get the benefit of that. You put your stocks, your bonds, your investment property, everything else that is considered unearned income in here, then I will be willing to pay some attention, at least to the arguments being made.

The bottom line is this, Mr. Speaker: You cannot go against the House rules and manual, which incorporate the Constitution of the United States which says you cannot abridge free speech.

Mr. MOAKLEY. Mr. Speaker, I yield 6½ minutes to the gentleman from Washington [Mr. MCDERMOTT], the ranking minority member on the Committee on Standards of Official Conduct.

Mr. MCDERMOTT. Mr. Speaker, I rise today to support the distinguished chairwoman of the Committee on Standards of Official Conduct, the resolution she has introduced, and the committee which she has very ably led.

That we are here today is a tribute to her leadership and to her steadfast commitment to the ethics process that this body has so carefully crafted to deal with the sensitive and troubling issues posed by allegations of Member conduct.

We meet today, however, not as the last Speaker suggested to deal with one Member, but to consider a rule that if enacted will reflect well on the conduct of all Members. The proposed rule change, to eliminate the copyright royalty exception to the earned income cap, was in fact developed in the context of the Committee on Standards of Official Conduct's review of allegations against a Member, and bringing it to the floor today was a central element in the committee's unanimous vote of December 6.

But, regardless of the outcome of the other matter, this is a good proposal. It should be considered on its own merits, free from partisan bickering.

The resolution of the Committee on Standards of Official Conduct that we bring here today is a well thought out effort to bring some sense to the earned income restrictions by eliminating a major loophole. Its basic thrust is to ensure that those who offer money to a Member to write a book do so because of the content of the book, not the position of the Member.

Similarly, in the past the House has placed restrictions on Members' professional activities so as to ensure that lawyers and teachers among us were not hired solely because they were Members. In the one case we eliminated altogether the possibility of income. That is lawyers. In the other, as we pose today, we placed a cap on it.

We did this not because of polls that said it is what we should do; we did it because we think it is right. And if it was right to prohibit compensation to our colleagues who are lawyers and to restrict the outside earnings of all others, it is right to place a cap on royalty income.

As the committee noted bluntly, but correctly, in its unanimous report of December 6, it is not appropriate to capitalize on one's office. This is not a body of 435 free enterprise zones. To prevent such conduct, the Committee on Standards of Official Conduct has produced a straightforward measure that prohibits advances to the author, requires all book contracts to be approved by the Committee on Standards of Official Conduct, and subjects royalty income to the same earned income cap that applies to all other activities.

This new cap would apply to royalties pertaining to books sold after December 31, 1995, and then only if the book was published when the Member was in the Congress. No advances paid on royalties prior to December 31 would be affected. These provisions, in my opinion, reflect the realistic accommodation of several competing interests. Members are permitted to earn a not insubstantial amount of money, the temptation of multimillion-dollar advances is eliminated, and the public will continue to have the opportunity to read what Members want to write.

Now, as to the process, traditionally recommendations of a nonpartisan

Committee on Standards of Official Conduct are considered on the floor by way of a privileged resolution without going through the partisan Committee on Rules. Just as traditionally, the Committee on Standards of Official Conduct usually does not suggest substantive measures that are within the jurisdiction of other committees.

But after careful deliberation and in compelling circumstances, we did so in this case. And to protect the interests of the committee and the nonpartisan processes, it is vitally important that we be permitted to present our measure to you today as it was written.

This is not an attempt to usurp the powers of any other committee or to force the leadership to choose between chairmen. It is, and was, a sincere effort by the committee, made up of 10 Members, 5 Republicans and 5 Democrats, to bring to the floor a measure that we thought demanded immediate consideration.

Some may say this rule change has had no public hearings. We spent countless hours talking to publishing industry executives, book agents, and others in the field, and then we drew the rule. We have done it by a trial of fire, and we settled on this as the best way to do it.

In closing, I would like to commend the chairwoman for her leadership, and I commend my colleagues on the committee for their thoughtfulness and hard work, and particularly, the gentleman from Ohio [Mr. SAWYER] and the gentleman from Ohio [Mr. HOBSON] deserve praise for the time they spent on crafting this resolution.

You often hear in this House the lament that none of us asked to serve on this committee. It is true. While I do not suggest, however, that you support our recommendation because of the pain we have endured or will endure, I do believe it is relevant that those closest to the issue have produced a bipartisan solution to a problem of much importance to this House.

This is a vote in support of a bipartisan decision on the Committee on Standards of Official Conduct. In the past the House has only strengthened what has come out of the committee. It has never weakened it. With all due respect to the gentleman from New York, his amendment weakens the proposal proposed by the Committee on Standards of Official Conduct. Therefore, I ask Members to support the proposal of the committee and reject the Solomon amendment.

□ 1030

Mr. SOLOMON. Mr. Speaker, I yield 4 minutes to the gentleman from Albuquerque, NM [Mr. SCHIFF], a very outstanding Member of this body and member of the Committee on Standards of Official Conduct.

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

I want to begin with a very serious and sincere expression of gratitude to the gentleman from New York, Chairman SOLOMON, and the Committee on Rules for bringing this matter to the House floor in such a short period of time. As he indicated, it was only a few days ago that the Committee on Standards of Official Conduct, which I am a member of, proposed this rule change, and asked to get it to the House floor by January 1, that is, before January 1, 1996.

Chairman SOLOMON, although his plate was more than full with other legislative matters, although he had some specific individual concerns about the proposal, which he has certainly indicated, has such a high regard for the Committee on Standards of Official Conduct, and understands its importance to the House of Representatives, that he literally turned the Committee on Rules into a legislative pretzel to get us out here this morning and he has my deep appreciation.

Second, I want to express my same appreciation to our chairwoman, the gentlewoman from Connecticut, NANCY JOHNSON. Even though Members agree and disagree individually, it is still not easy to get a majority vote on a situation where the committee is divided equally between Republican and Democratic Members. The Committee on Standards of Official Conduct is the only committee in the House of Representatives where we are equal as Republicans and Democrats.

And Chairwoman JOHNSON has got a proposal, it is here on the floor, and it is here for Members to consider. And the gentlewoman from Connecticut [Mrs. JOHNSON] said that she guaranteed that she would get it to the House floor. Even though our chairwoman is not the chairman of the Committee on Rules, she guaranteed it would be on the House floor for Members to work their will on how to address this issue and that has been done. And I complement Chairwoman JOHNSON, too.

That brings me to the rule itself. This proposed rule change was a result of a compromise, a lot of discussion and a lot of different views being rolled into one proposal. As a member of the Committee on Standards of Official Conduct who participated in putting together this proposed rule change, I intend to vote for it when we get to that vote. However, I want to acknowledge that in my judgment, speaking now individually, other members of the committee may have different views, but, in my judgment, the Solomon substitute, which we will have a chance to also vote on the House floor today, and it was always the understanding that amendments might be offered once we got to the House floor, I believe the Solomon substitute is another way that addresses the problem that originally brought this whole matter to the attention of the Committee on Standards of Official Conduct.

I say that for this reason. The exception that we have allowed for book royalties allowed an exception for everything that was usual and customary in the publishing trade. And what we learned is that in the publishing trade prominent people are often offered large cash advances to write books. That has been true regardless of why the person is prominent. They could be a military veteran. They could be a former prosecutor in a well-known case in the State of California. It does not matter. The fact is that prominent people are offered by publishing houses large advances.

Now, it was the Committee on Standards of Official Conduct's feeling that when someone is prominent as a Member of Congress in particular, a Member of the House of Representatives, one cannot help wondering that no matter how prominent the individual is, no matter how strong his intellectual credentials might be or her intellectual credentials might be, Republican or Democrat, it inherently raises a question when a large advance is offered. Did they really like this book or are they trying to get in close with somebody who votes on issues? That was the basis of the Committee on Standards of Official Conduct moving forward.

Now, the Committee on Standards of Official Conduct offers a solution that I will vote for. It eliminates all advances and it subjects royalties. That is book-by-book sales to the $20,000 proximate limit on all earned income outside of the House of Representatives.

The gentleman from New York, Chairman SOLOMON, proposes a substitute that eliminates the advances, eliminates the major issue that brought this issue up in the first place and allows the continuation of book-by-book sales. I will support the Committee on Standards of Official Conduct, but I think both address the problem.

Mr. MOAKLEY. Mr. Speaker, I yield 3½ minutes to the gentleman from Wisconsin [Mr. OBEY], a person who has some legislative history on this entire matter.

Mr. OBEY. Mr. Speaker, I support the committee resolution and oppose the Solomon resolution, and I want to tell Members why.

The House has an exemption in the rules which limits outside income for Members. It has an exemption for book royalties, because I agreed to put it there back in 1977. At that time I chaired a commission that rewrote the House Code of Ethics under which 18 Members had been disciplined, a code which was upgraded 3 years ago.

At that time, we voted to impose limits on outside income after a Presidential commission, chaired by Pete Peterson, who today heads the Concord Coalition, recommended a congressional pay raise, but they said it should go into effect only after Members had passed limitations on outside income to assure that Members could not trade on their positions for undue personal gain.

I had one Member of the House come up to me and he said, ''DAVE, I do not understand what you are doing with

law practice.'' He said, ''I do not spend any time at my law practice. It is just that as I rise in seniority, the lobbies toss more business our way and I get a piece of the action.'' I said, ''I know. That is why we are doing what we are doing, because we do not think that is right.''

I made an exception in the recommendation to the House on book royalties because at that time we had people like John Anderson, Mo Udall, Dick Bolling, who had written books. They were largely regarded as academic exercises. We never dreamed that any of them would be used to in any way significantly enrich a Member's lifestyle.

Today, I think we have a different situation. To me, any individual Member can today exploit that loophole to unduly enrich himself because there is a conflict of interest. The amount of money that you make is going to be determined by the aggressiveness with which the publisher promotes the book. And if that publisher, his firm, has an interest before the Congress of the United States, that is a very troubling potentiality which I think events have shown we have to eliminate.

I want to say one other thing. The gentleman from New York [Mr. SOLOMON] said that if we do not pass his amendment that Members of Congress will be ''second-class citizens.'' No person who has ever been elected by his fellow citizens to represent them in the halls of the Congress of the United States can ever be regarded in any way as a second-class citizen. The honor that is extended to us by that act far exceeds any monetary value that can accrue to anyone by virtue of any financial gain.

Members of Congress ought to be willing to give up something for the greater good. In this instance, it is necessary for us, in my view, to stick with the committee. It is not a pleasant experience to serve on that Committee on Standards of Official Conduct. It is the toughest job in this House, whether you are a Republican or a Democrat you are asked to make excruciating judgments every day. That committee deserves to be backed up by the judgment of this House.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana [Mr. BURTON], a very distinguished veteran Member of this body.

Mr. BURTON of Indiana. Mr. Speaker, let me just say that I think we should give up something to serve in this House, and I think most people do give up something, but we should not give up everything. We should not give up everything.

A lot of people have outside investments, and I guarantee my colleagues that this is going to lead to the point where if we have outside investments, property and so forth, and we sell it, we will not be able to get over $20,000 a year out of our investments. And a lot of people have made those investments counting on them for additional income because of the kids in college and other expenses they have to deal with. But we are going to lead to that. That is where we are going.

In the past years, I have served with thousands and thousands of legislators in the State House and in the Federal Government, and very few were corrupt. I would say much less than one-half of 1 percent. And yet we engage in self-flagellation around here on a routine basis. We might as well have a cat-o'-nine-tails with little pieces of metal in it and just beat each other to death in front of the public. Maybe that will satisfy this insatiable desire for perfection. We are not going to be perfect. We are human beings. But we have a much lower rate of crookedness than the average population. and if Members do not believe it, just look at the statistics. Mr. Speaker, the thing that bothers me is we just continue down that road.

My staff, who make very little salary, cannot even take an apple from somebody now. They cannot have a sandwich with somebody. They are making $20,000 a year, and they used to look forward to a lunch with somebody, and they cannot do it anymore because of the gift ban that we passed. We are just going way too far. Way too far.

Mr. Speaker, I think that what we ought to be doing is we ought to be thinking about watching ourselves. If we do something corrupt, it is going to be brought out. I do not understand the mentality that says that we have to continue to limit ourselves, to squeeze ourselves time and again.

And every single outside group, like Common Cause or Ralph Nader, they raise their eyebrows a little bit and we all start genuflecting. We all start getting more and more concerned. It makes no sense to me. Why are we doing this?

If a person writes a book, I think the Solomon amendment addresses it very well. No big bonus at the front end, but if it is a royalty they get, they earn, they should be able to get that. What is corrupt about that? Intellectual property rights ought to be protected by this body. We should not be taking away first amendment rights. The gentleman from Hawaii is absolutely correct, that is what we are doing. I just simply do not understand it.

If a person is going to be corrupt, they are going to be corrupt. They are going to take money like they did in ABSCAM. They will take it under the table, behind the back, over a transom, in a hotel room. So they are going to be corrupt, and they should be brought to justice. But we should not all be beating each other to death continually before the public like we do. It makes absolutely no sense.

And let me just say this, Mr. Speaker. I really and truly believe we are going to drive people out of this chamber who have a lot to contribute because we are squeezing everybody so tightly.

Mr. MOAKLEY. Mr. Speaker, would you kindly inform me how much time is left on each side.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] has 10½ minutes, the gentleman from New York [Mr. SOLOMON] has 8½ minutes remaining.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from California [Ms. PELOSI].

Ms. PELOSI. Mr. Speaker, I, too, want to commend the gentleman from New York, Mr. SOLOMON, and the gentleman from Massachusetts, Mr. MOAKLEY, for making this debate possible this morning; and add my voice to those commending our chairperson of the Committee on Standards of Official Conduct, the gentlewoman from Connecticut, Congresswoman NANCY JOHNSON, and our ranking member, the gentleman from Washington State, Mr. MCDERMOTT, for their leadership. And, as I say, especially our chairperson, for forging a consensus on this very difficult issue, and reminding Members of our evenly divided bipartisan committee.

I want to remind my colleagues of a couple of things. Once again, the committee is bipartisan, evenly divided, five Democrats and five Republicans. And the report of which this rule was a part, the report and the better, came out of the committee unanimously, ten to nothing.

I also want to remind my colleagues that should this body reject the recommendation of the Committee on Standards of Official Conduct, it would be the first time that the House of Representatives would have done that.

Mr. Speaker, it seems ironic to me that we are gathered here this morning, while the Government is shut down, while we are having debates about how we are going to get checks out to poor people, that we are standing here talking about why Members of Congress should make more money on the outside, earned income, after they have been elected to come to Washington, DC, to do a job.

I think that the particular rule we are addressing, frankly, does not speak necessarily to the integrity of any individual Member, but to the picture of what the American people expect of us; and, also, how the publishing industry works, which I think was enlightening to us, those of us on the Committee on Standards of Official Conduct.

□ 1045

So, I would say to our colleagues, I could be wrong. I could be wrong. But I think the American people, and I think the people involved in grassroots politics and issues who fight so passionately for their point of view, and those who elect us to this Congress, expect us to come here and not, as the gentleman from Washington [Mr. MCDERMOTT] said, be 435 free enterprise profit-making zones, but to do the work of the people.

Mr. Speaker, I urge our colleagues to support the Committee on Standards of

Official Conduct and reject the Solomon resolution.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. FAZIO].

Mr. FAZIO of California. Mr. Speaker, I know we meant to spend a good deal of time on matters related to the integrity of this institution during this Congress. I simply want to say I think this vote today is as important as any we have cast on gift rules or on bringing this institution under laws that govern all Americans. This is a vote that I think goes to the question of the integrity of the process of enforcing the rules here in the House on our peers.

Mr. Speaker, having served on the Committee on Standards of Official Conduct for 8 years during some very difficult times, I have nothing but the greatest admiration for those who serve during this very difficult time. I can tell my colleagues that it is important to the integrity of this institution that this committee be perpetuated in its unique bipartisan status and that its recommendations be upheld when they are brought to the floor in the manner in which they have come here.

Mr. Speaker, we ought to pay all 12 of these individuals the respect that they are due and we ought to vote for their proposal today. No Member among us, unless they have served there, will ever understand what they do as a sacrifice for this institution. They are often said to be fools to take the job. I think they are among the most respected in the institution, because they get no credit at home, but they keep this body together when they do their job in a way that in the long run is what the American people most need.

Mr. Speaker, I have hopes that we will vote not at all to reject the proposal they have made. I ask people not to support the Solomon substitute.

Mr. Speaker, I also served with a number of my colleagues in 1989 on a committee that did a number of good things for this institution. We banned honoraria. We limited trips. We increased disclosure. We barred professional fees. We set gift limits that have been strengthened by earlier action this year. We ended the practice of taking campaign funds with us on retirement. We also limited outside earned income.

Today we complete what I have to say was an imperfect job. We ought to pass this rule proposed by the committee to bring us into closer conformity with the executive branch, and do what must be done to concentrate our efforts on the job here in Washington.

Mr. Speaker, I rise in support of the resolution brought forward by the chair and members of the Standards of Official Conduct Committee.

As a past member of the Standards Committee during some of the most difficult deliberations undertaken by the committee, I can empathize with the dilemmas presented to the committee this year.

They have done a good job under difficult circumstances, and the committee's resolution today reflects their hard work and courage in taking on many difficult questions.

In addition to my service on the so-called Ethics Committee, I was privileged to be chairman of the 1989 bipartisan Commission on Ethics Reform that made significant changes to the rules we live under today.

We banned honoraria.

We capped earned income.

We limited trips.

We ended the practice of taking campaign funds on retirement.

We increased disclosure.

We barred professional fees.

We banned revolving-door lobbying for the first time.

We set gifts limits—which were further strengthened by our action this year.

We did those things, and after hemming and hawing, the Senate came around later.

I think the institution is much better for the changes we made.

I think the American public is better served by ending some of those practices.

In discussing changes, then and now, we need to keep our paramount goal in mind.

It is the same goal we addressed in passing a gift ban this year.

It is the same goal we addressed in passing lobby reform legislation.

The goal: instilling confidence of Americans in their Government.

Over the years, we have done that by making incremental changes in our rules which minimize the inherent conflicts of interest that will always be part of this job.

But how many times during this debate and others will you hear our colleagues say—''we want to go further, we want to take the next step''—we want to eliminate even the appearance of conflict.

It is a worthy goal and one we will always be challenged to respond to as times change.

We talked about radio shows back in 1989.

We came back in 1990 to prohibit Members and Senators from earning money for participation in radio shows. One Senator had made $37,750 for participation in 1990 radio shows.

Mind you, we didn't prohibit participation in regular radio shows.

We merely said that our constituents might look at receiving large fees from radio shows as a method of avoiding the limitations on honoraria and earned income, and we need to do whatever is necessary to avoid that appearance.

We also dealt with books back in 1989.

Books were controversial then, as they are now.

As we all know, former Speaker Jim Wright ran afoul of ethics provisions regarding books, and we clarified the ethics rules at the time to specify that royalties are exempt only if they come from established publishers, under ''usual and customary'' contract terms.

But we were somewhat less concerned about a flurry of money-making tomes emanating from Members of Congress.

In fact, I was quoted at the time saying, ''There aren't many members who write books.''

Well, times have changed.

The popularity of C–SPAN has increased.

Talk shows and news programs have proliferated.

The media's penchant for training their sights on controversial figures within our membership has intensified.

The prospect of a Member benefiting personally from becoming a controversial leadership figure has opened new doors we could not fully have anticipated back in 1989.

But the need to avoid the appearance of conflict of interest has remained the same—and that is what we are addressing with this resolution today.

The grounding of this resolution is well known.

Late last year, Speaker GINGRICH made an agreement with a publishing company owned by media magnate Rupert Murdoch for a book advance of $4.5 million.

The Speaker acknowledged the controversial nature of such an advance on December 30 when he renounced the advance and agreed to accept only royalties.

On January 19, the Speaker spoke to several telecommunications company executives, including Murdoch, who were in Washington to lobby Republicans on the House Commerce Committee.

The companies were Tele-Communications Inc. [TCI], the Nation's largest cable television firm, and Jones Intercable Inc., the 11th-largest. At the time, TCI had announced plans to bring National Empowerment Television [NET], a conservative-oriented cable show that features a call-in program with GINGRICH, to its 10.6 million customers. NET already carried GINGRICH's college course, Renewing American Civilization. Jones Intercable had started carrying GINGRICH's course on its Mind Extension University channel, which reaches 26 million households.

Both TCI and Jones Intercable spent hundreds of thousands of dollars last year lobbying Congress and contributing to congressional candidates, as did Murdoch's News Corporation, which owns Harper Collins, GINGRICH's publishing house.

With major telecommunications legislation pending before the House and the Commerce Committee, the appearance of conflict of interest was created by the Speaker's actions.

In the past, we have treated royalties as exempt from outside earnings.

We said royalties amounted to a return on the author's intellectual property, clearly beyond his or her direct control.

But it is clear that advances on royalties pose a separate and more difficult question. It is clearly related to the opinion the committee has had for many years about written articles, where payment is negotiated in advance.

The committee has always treated such advance payments as earned income subject to the earned income limitations.

It is clear from this year's events that the committee has gone the extra step in believing book advances should now fall into this category as well, and that it is difficult if not impossible to separate the issue of advances from the issue of royalties.

A unanimous Ethics Committee has been troubled sufficiently by these events that they are bringing this proposal today.

The Speaker would be largely unaffected by this so it is inaccurate to say he is somehow a target.

His book was published before the December 31 deadline, and presumably most of his royalties have already been obtained.

But the circumstances surrounding the Speaker's book transaction show the difficulties involved with transactions of this kind, and the inherent conflicts of interest that may be

created as Congress grapples from year to year with far-reaching legislation.

I would remind my colleagues about the restrictions for those in the executive branch: Cabinet-level officials, and all other official appointed by the President to a full-time, non-career position, are barred completely from receiving any outside earned income; other high-level officials in the executive branch in noncareer positions above a GS–15 level, are subject to the 15-percent limitation on outside earned income, but they may not receive compensation for speaking or writing if the subject matter deals primarily with programs and operations of his/her agency; advances on royalties are considered to be earned income subject to the earned income limitations.

So the proposal today is in keeping with the executive branch although House Members, unlike Cabinet officials, will continue to be able to earn outside income.

But perhaps the deeper question raised today is whether we are going to allow the Ethics Committee process to go forward.

As a former member of that committee, I know how hard those judgments are to make, I know how hard it is to work for and gain unanimity in that room.

This House has always respected that unanimity in the past.

That process—that bipartisan process by the only committee in this House with equal numbers of Republicans and Democrats—should be above politics and above passions of the moment.

That committee and that process is bigger than any one Member, and it is bigger than any clique, or any temporary coalition of Members with a different opinion.

Ultimately, Members and cliques and coalitions are fleeting.

But this process—this bipartisan process—must survive for the good of this institution.

If we allow that process to fall to the politics of the moment, this House will be the loser. And all of us should be wary from that moment on—wary that a politicized Ethics Committee process will destroy the ability of this House to respond to the many difficult issues raised each year and give our constituents the confidence that those issues will be decided without interference, and without regard to personality or politics.

That's why I support the action by the chairman today, and I urge all my colleagues to support this resolution without amendment so that the Ethics Committee process can flourish and go forward in this Congress and in Congresses to come.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. ROHRABACHER] from the ever-expanding State of California; they keep bringing more and more Members here every year.

Mr. ROHRABACHER. Mr. Speaker, the proposed change in intellectual property rights of our Members is bad policy and wrong-headed. If any Member writes a book after this change goes into effect, all it means is that the publisher will get the money that is due to the writer. That is all this means. We are doing nothing but giving the publisher money that deserves to go to a writer.

Mr. Speaker, I know that. I am a writer by my profession, and I will say this. Those of my colleagues who claim that a book written by a Congressman is going to be a seller and we are just standing on our job as a Congressman to sell books, there are many books that have been written by Congressmen that have failed, utterly failed, and publishers know that. Some publishers are really hesitant to deal with Congressmen for that reason.

Mr. Speaker, I say the decision should be made by the public as to who receives the money and who benefits from writing a book, whether it deals with a Member of Congress or not. That is what the Solomon amendment is all about.

Mr. Speaker, it leaves it to the public, and it does not leave it to grandstanding politicians who now are trying to portray themselves to the public as reformers, when in reality all this is is an act of self-flagellation for the sake of presenting a public image. It has nothing to do with the development of policy in this body. This will have no impact whatsoever on policy decisions.

Those people who are pushing this reform, by the way, I would like to know the incomes of those people. I happen to be a very poor person. I have hardly any assets. I am a writer by profession. I spent several years in journalism while other people who are now in this body were out making money in real estate or making money in other investments or marrying into money.

The fact is, what we are seeing now, those of us who are poor, rather than the millionaires in this body, are seeing their right to write a book and to have some income from our talent, which is our only asset, limited, while other people who are wealthy are not putting any restrictions on their ability to earn money while they are in this body.

Mr. Speaker, I reject that totally, and if somebody comes up and says all unearned income will be restricted, I will support it. But it somebody comes up and says my right as a writer and a journalist and an average American is being restricted, I will not.

The bottom line is let us leave this up to the American people. let us quit grandstanding. The American people will decide if a book is worth buying or not, and whether a politician's ideas are worth purchasing. Let us not make this a windfall for publishers.

Mr. Speaker, all it will mean is that we will not have the incentive and we will not spend the time to write on the airplane, which I have done. I have spent my own private time on the airplane writing this book. And when I come in this door, I check my privacy when I come in this door, and now I cannot write a book about it to explain myself to the American people. It is an insult.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume to say that I think the gentleman that left the microphone is in complete error if he calls the Committee on Standards of Official Conduct a grandstanding body of people. They are probably the hardest working and most abused people here in the Congress, and I want to disagree with the gentleman there.

Mr. Speaker, I yield 4 minutes to the gentleman from Michigan [Mr. BONIOR], our minority whip.

Mr. BONIOR. Mr. Speaker, never before in the history of this House has a recommendation by the Committee on Standards of Official Conduct been weakened on the House Floor. Never before in the history of this House has a unanimous, bipartisan decision by the Committee on Standards of Official Conduct been denied a simple up-and-down vote on this floor.

Mr. Speaker, I hope we do not see that dangerous precedent here today. Mr. Speaker, it was exactly one year ago this very day that we learned of the Speaker NEWT GINGRICH's $4.5 million book deal, and over the past 12 months the Speaker has made, as the gentleman from Massachusetts indicated, he has made approximately 10 times the amount of his congressional salary on his book deal.

After a year-long investigation, the Committee on Standards of Official Conduct found that the Speaker used a loophole in the rules in an attempt to capitalize on his office. They found that the Speaker's book deal, and I quote, ''Created the appearance of exploiting one's office for personal gain.''

In fact, members of the Committee on Standards of Official Conduct were so troubled by the Speaker's action that, in a unanimous bipartisan vote, five Republicans and five Democrats recommended changing the rules of this House so no Member would ever be able to cash in on his or her office to create a personal fortune.

Under the recommendation of the Committee on Standards of Official Conduct, money from book royalties would be treated just like other outside income, subject to the annual cap of $20,040. The Committee on Standards of Official Conduct believes firmly that this is a fair way to deal with this problem and to close the loophole.

But rather than allow a simple up-or-down vote on this recommendation, for the first time in the history of this House a recommendation from the Committee on Standards of Official Conduct is in danger of being weakened. The Solomon substitute before us today does not limit book royalties. It allows unlimited royalties, just like the current rule. It does not address the Speaker's book deal. It actually exempts it, because this substitute only applies to book contracts signed after January 1, 1996.

Mr. Speaker, the Solomon substitute is actually weaker than the current standard for Federal employees, because if we were following Federal standards, no Member could make money off of a book that had anything to do with his or her office.

The Committee on Standards of Official Conduct has recommended this

rule change because it was concerned about Members capitalizing on their office. It recommended closing this loophole so a Member never again would be able to exploit his or her office for personal gain.

Mr. Speaker, I would suggest that we should follow the recommendations of the Committee on Standards of Official Conduct. It was 1 year ago today that we first learned about the Speaker's $4.5 million book deal. Let us observe the 1-year anniversary by closing the loophole so nobody can get away with it again. I urge my colleagues to vote against the Solomon substitute and support the recommendation of the Committee on Standards of Official Conduct.

Mr. SOLOMON. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I am just surprised to hear the gentleman from Michigan [Mr. BONIOR], the minority whip, come to the well and all of the sudden make this a personality issue. I am reading the last paragraph of the letter from the gentleman from Washington [Mr. MCDERMOTT] and the gentlewoman from Connecticut [Mrs. JOHNSON]. It says it is not directed at any Member or book. Rather, it is the result of full and careful consideration, and it goes on. It is a shame now this has dropped down like this.

Mr. Speaker, I yield 2 minutes to the gentleman from Kentucky [Mr. BUNNING], a member of the Committee on Standards of Official Conduct, to expand on that just for a moment.

Mr. BUNNING of Kentucky. Mr. Speaker, obviously the gentleman from Michigan [Mr. BONIOR], the minority whip, is incorrect. Recommendations of the Committee on Standards of Official Conduct have been changed on the floor of the House; in the recent past, in fact. Certain recommendations for censure were changed to a different level, to reprimand, and other things like that. So, in fact, they were changed on the floor of the House of Representatives.

Mr. Speaker, let me say something. I have served on the Committee on Standards of Official Conduct for 5 years. First of all, the misstatements that have been made here that it was a unanimous vote on the rule was incorrect. I have tried to correct that publicly, but I have not been able to because nobody will bring it to the public's face.

Mr. Speaker, I did not vote for the rule change and I am going to continue to tell my colleagues, I did vote for the resolution to bring the report to the floor. This started out as a rule change for all of Congress. It has turned into, by the office of the Democratic whip, a referendum on the Speaker of the House.

Mr. Speaker, I think it is insane. I think it is wrong. I think it was not in the best interest of the Committee on Standards of Official Conduct, and if anybody has any doubt about supporting the Solomon amendment, read the recommendations of the office of the Democratic whip and they will vote for the Solomon amendment and against the recommendations of the Committee on Standards of Official Conduct.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the gentleman from Palm Springs, CA [Mr. BONO]. Californians are all over the place. This gentleman is probably one of the most famous ever to come out of California.

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

Mr. BONO. Mr. Speaker, I am sorry I only have 2 minutes to speak. I am going to make a very broad statement. I know more about copyright than any Member, and I will be happy to debate any Member on all of these copyright axioms that I have heard while I was sitting here. They are not true.

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Any time anybody wants to debate that, I will.

Now, the notion that the industry is a corrupt industry is where you are going to have to begin with, because the process of copyright is one of advances. If you write a book, if you write a song, if you write a play, if you write a script, you are always advanced. Get that clear. You always get an advance, and it does not make any difference whether they guess wrong or whether they guess right. The industry decided to do it that way since the inception of the industry, and they usually guess right.

So the notion that someone giving you an advance is dastardly is ridiculous because the industry has operated that way since it began.

In my case, I can always, I have always, been able to take an advance from BMI or ASCAP whenever I wanted it. Well, you shut that down with the accusation that I am corrupt. Well, that is not true. I am not corrupt.

My songs have a value, and because they have that value, I have the right to that advance and have exercised that right before.

So we are here with the lesser of two evils. So you are knocking out an industry that you do not even know, and I will yield 15 seconds to any Member who can define ethics. Can some Member define ethics for me in 15 seconds? You cannot.

I support the Solomon proposal. It is the best of the worst.

Mr. MOAKLEY. Mr. Speaker, I yield the balance of my time to the gentleman from Maryland [Mr. CARDIN], who is a member of the Committee on Standards of Official Conduct.

Mr. CARDIN. Mr. Speaker, I thank the gentleman for yielding me this time and really thank our chairman, the gentlewoman from Connecticut [Mrs. JOHNSON] and the gentleman from Washington [Mr. MCDERMOTT] for what they have done to get a 10-to-0 vote in our committee on the recommendations and report.

This is about supporting ethics. This is about supporting the bipartisan work of the Committee on Standards of Official Conduct. I hope each Member will take into consideration the fact that the vote coming before you is the unanimous work of our committee in dealing with some very difficult issues.

I wish we could go into more detail, but the rules of our committee do not permit that. But this is a very important vote, and it reflects the confidence that you have in this bipartisan Committee on Standards of Official Conduct process.

The substance of the rule that we bring before you completes the commitment we made to the American people under the Ethics Reform Act of 1989. That act increased Members' salaries by a significant amount, 30 percent, in exchange for which we restricted our outside earned income, and eliminated honoraria. We did that, but we allowed one exception, and one exception only, and it dealt with book royalty contracts.

We thought at that time that book royalty contracts would be a minor matter and it was not a major issue. We were wrong, as multimillion-dollar contracts have become available.

We said in 1989, and we repeat today in our ethics manual, that we need to restrict outside earned income because it conflicts with our responsibilities as Members of Congress, private commitments that may infringe upon public obligations. The pressures upon publishers for us to do tours or to promote our book conflicts with our responsibilities here. The appearance that an individual is profiting from a position in Congress, that is in our ethics manual. Outside earned income raises those concerns. Multimillion-dollar book contracts can raise those concerns.

The Solomon substitute will allow Members still to earn multimillion dollars in book contracts. That is wrong, and that is what the Committee on Standards of Official Conduct is saying.

The choice is clear. Please, support the work of our committee. It is also a matter of fairness. A farmer or a bricklayer or a doctor or a jewelrymaker, a performer or a football player who wants to have weekend youth camps, a person who records music or a person who develops software for computers are currently restricted to 15 percent, or $20,000. The only exception is book royalties. That is not right.

We do not impede people from doing these activities. We say there is a limit as to how much they can earn.

Originally, the Solomon substitute was promoted to make it similar to executive workers. Nothing could be further from accurate. High-level Federal officials cannot earn one dime from royalties that are in any way related to their official work.

If we do not approve the Johnson resolution, we are allowing Congressmen to do much more than executive workers. The risk here is very real. We are telling you, in the Committee on Standards of Official Conduct, that we can not protect against abuses. Book

contracts, book sales will take place. It will enrich Members.

Support the work of the Committee on Standards of Official Conduct.

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

Mr. HOBSON. Mr. Speaker, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Ohio, a very valuable member of the Committee on Standards of Official Conduct.

Mr. HOBSON. Mr. Speaker, the Committee on Standards of Official Conduct is not an easy place to serve, and I appreciate the bipartisan support that we have worked with within that committee.

The rule that the Committee on Standards of Official Conduct presented to the House was arrived at after much spirited negotiations among its members but, I think, in good faith by all members of the committee.

The goal of the rule is to solve various problems that we identified with the House's current policies relative to the publishing of books by Members. There were various views expressed by members of the committee, and this rule is a compromise. Not everybody agreed with every point in it, but it was a compromise.

I support the committee's position and its rule.

But, more importantly than that, I think it is important for the House to have this debate in a comity, for the most part which we have had, and whatever rule that comes out of this, it is important that we resolve this problem in a consensus manner without bitter debate because we have to judge ourselves and be judged by others and work together.

So whatever rule comes out of this, it is important that we end it now and go back to our work together in the committee.

Mr. SOLOMON. Mr. Speaker, reclaiming my time, let me just close by saying the Johnson resolution restricts royalty income and bans advances. The Solomon substitute prohibits advances but does permit royalty income, and those are the two choices, or you can reject them both and leave the rules the way they are.

I hope that you will continue to treat us all the same and let us vote for the rule and then get on to the debate on the resolution itself.

SUMMARY, BACKGROUND AND ANALYSIS OF H. RES. 299, PROPOSED NEW RULE ON BOOK ROYALTIES AND RELATED ISSUES, PREPARED BY THE STAFF OF THE HOUSE RULES COMMITTEE

Introduction: On December 12, 1995, Representative Nancy Johnson of Connecticut, chairman of the House Committee on Standards of Official Conduct, introduced H. Res. 299, a resolution to amend House Rules regarding outside earned income. The measure was cosponsored by eight other members of the 10-member, bipartisan Standards Committee.

The resolution was introduced pursuant to a vote of the Committee in connection with the report it issued on December 12th on the ''Inquiry into Various Complaints Filed Against Representative Newt Gingrich.'' In its report, the Committee found that Representative Gingrich ''did not violate the House Rule governing book contracts or royalty income'' and that ''the book contract was in technical compliance with the 'usual and customary' standard of House rules regarding royalty income.'' However, the Committee it went on to indicate that ''the original advance greatly exceeded the financial bounds of any book contract contemplated at the time the current rules were drafted,'' and that it ''strongly questions the appropriateness of what some could describe as an attempt by Representative Gingrich to capitalize on his office.''

Consequently, the Committee recommended in its report that House Rule 47 (''Limitations on Outside Employment and Earned Income'') be changed to subject royalty income derived from books written while one is a Member to the same limits as other sources of outside earned income.'' A copy of the proposed rule was appended to the report.

SUMMARY OF PROVISIONS OF RULE CHANGE

(1) Inclusion of Copyright Royalties as Earned Income: House Rule XLVII (''Limitations on Outside Employment and Earned Income''), would amend in the first paragraph of clause 3(e), which defines ''outside earned income,'' by adding the following new category: ''copyright royalties earned while a Member, officer or employee of the House''; and subparagraph (5) of clause 3(e), which now exempts ''copyright royalties received from established publishers pursuant to usual and customary contractual terms'' from the definition of ''earned income,'' would be amended to only exempt ''copyright royalties for works published before becoming a Member, officer, or employee of the House.''

(2) Limitations on Receipt of Copyright Royalties: Clause 3 of rule XLVII would be further amended by adding a new paragraph (g) that would prohibit a covered Member, officer or employee of the House from—

(1) receiving any copyright royalties pursuant to a contract entered into after becoming a Member, officer or employee: (a) unless they are from an established publisher pursuant to usual and customary contractual terms; and (b) the contract has received prior approval of the Committee on Standards of Official Conduct;

(2) recieving any advance payment for any such work; but this prohibition shall not apply to advance payments made directly to literary agents, research staff, and other persons working on behalf of the Member, officer or employee.

Clause 3 of rule XLVII would be further amended by adding a new paragraph (h) that would prohibit the Committee on Standards of Official Conduct, subject to such exceptions as it deems appropriate, from approving any contract that permits deferral of royalty payments beyond the year in which earned.

(3) Effective Date: The amendments made by the resolution ''shall apply to copyright royalties earned by a Member, officer, or employee of the House of Representatives after December 31, 1995.''

Possible Problem: The resolution only applies to ''copyright royalties earned'' after December 31, 1995 (p. 4, lines 3-5), but prohibits the receipt of such royalties unless the contract received prior approval by the Standards Committee (p. 3, lines 11-13). This could presumably prohibit individuals from receiving any royalties in 1996 from contracts entered into prior to that year since they would not have received prior approval by the ethics committee. Or is it simply intended that existing, pre-1996 contracts be approved prior to receiving any royalties in 1996?

Background and Analysis: The current House Rule XLVII (''Limitations on Outside Employment and Earned Income)'', was revised as part of the Ethics Reform Act of 1989 (Public Law 101–194) applies to all Members as well as House officers and employees whose pay is disbursed by the Clerk of the House and exceed the annual rate of basic pay in effect for grade GS–16 of the General Schedule under section 5332 of title 5 of the U.S. Code (currently $81,529), and is employed for more than 90 days in a calendar year. The exception to this definition is for the ban on total ban on honoraria which applies to all Members, officers and employees of the House.[1]

Clause 1 of rule XLVII prohibits Members, and officers and employees paid at least $81,529, from receiving outside earned income in excess of 15% of the Executive Level II salary (which is the same as a Member's base pay), or roughly $20,000. Clause 2 prohibits such individuals from receiving any compensation for: (1) affiliation with or employment by any firm, partnership, association, corporation or other entity which provides professional services involving a fiduciary relationship; (2) for practicing a profession that involves a fiduciary relationship; (3) from serving any officer or member of a board of any association, corporation or other entity; or (4) from teaching except by the prior notification and approval of the ethics committee.

Clause 3(e) currently defines outside earned income as ''wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered.'' The current definition goes on to specify certain matters not considered as outside earned income, including: (1) the salary of Members, officers or employees; (2) compensation derived by such individuals for personal services rendered prior to the effective date of the rule (calendar year 1991), or prior to becoming Member, officer, or employee, whichever comes later; (3) amounts paid to a tax-qualified pension, profit-sharing, or stock bonus plan received by such individuals; (4) amounts received by such individuals from services rendered by them in a trade or business in which they or their family holds a controlling interest and in which both personal services and capital are income-producing factors; and (5) ''copyright royalties received from established publishers pursuant to usual and customary contractual terms.''

Thus, under current House Rules, copyright royalties are considered to be unearned rather than earned income. As the most recently published version of the House Ethics Manual puts it:

House Rule 47 has long exempted book royalties for outside earned income restrictions, royalties being deemed a return on the authors's intellectual property, akin to other unrestricted returns on property.[2]

The Manual goes on to cite the Senate Special Committee on Official Conduct's 1977 report on its Code of Official Conduct as follows—

If an individual writes a book, and it becomes a best-seller, any royalties received are beyond his direct control. It is income which is, in effect, a return on a prior investment of time and energy.[3]

And the Manual concludes on this point by distinguishing book royalties from articles:

A book author's royalties generally reflect the book's sales, that is, the public's assessment of the book's worth. An article, on the

Footnotes at end.

other hand, typically garners a one-time fee, based only on what the publisher is willing to pay the particular author (and not necessarily limited by the marketability of the piece).[4]

Finally, the Manual offers the following Example to illustrate its point:

Member A writes a book of memoirs about his years in public service. An established publisher offers the Members its usual and customary royalty terms for the right to publish the book. Member A may have the book published and collect royalties. The royalties will be deemed ''unearned income'' and will not count against A's outside earned income cap.[5]

Restrictions on Executive Branch Officials: The Ethics Reform Act placed the same restrictions on top level officials and employees of all three branches of government paid at a salary above the GS–15 level. However, several things should be noted in this regard. First, Executive Order No. 12674, section 102 (April 12, 1989), bars all cabinet level officials and all other officials appointed by the President to a full time, noncareer position from receiving any outside earned income. Other high level executive branch officials who are in noncareer positions and compensated above the GS–15 level are subject to the law's 15% outside earned income cap as well as the prohibitions on the outside practice of professions involving a fiduciary relationship, and compensation for service on boards of organizations.[6]

Second, to the extent that non-career employees of the Executive Branch (paid in excess of the GS–15 level salary) are permitted to accept compensation for writing or speaking on the outside, they are proscribed by regulations of the Office of Government Ethics from being compensated for speaking, lecturing or writing activity if the subject matter ''deals in significant part with the general subject matter area, industry of economic sector primarily affected by the programs and operations of his agency.''[7]

Third, the honoraria ban on all officials and employees was held unconstitutional by the Supreme Court with respect to career employees at the GS–15 level and below (United States v. National Treasury Employees Union, Feb. 22, 1995), affirming lower court decisions overturning the ban. The Supreme Court held that the broad ban imposed prior limitations and restrictions on nearly 1.7 million citizens for their ''expressive activities in their capacity as citizens, not as Government employees.'' However, the application of the immediate ruling is to rank-and-file government employees in the executive branch who were represented by the plaintiffs.[8]

Fourth, royalties from the publication of a book are considered by the Executive Branch for its employees, as a return on one's intellectual property (copyright), that is, unearned income such as investment income, and are not considered outside earned income. However, advances on royalties and some other pre-publication payments and contracts have been held by the Office of Government Ethics, in advisory letters, to be earned income subject to the earned income limitations.[9]

Summary: It is clear from the foregoing that the proposed new House rule on royalties would constitute a major shift in the definitions of earned and unearned income regarding copyright royalties and advances on published works. It would also create a double standard for Executive and Legislative Branch officials and employees. The proposed limits may also raise First Amendment questions under the Constitution given the Supreme Court's decision in U.S. v. NTEU. All of these issues deserve thorough study before any action is taken.

FOOTNOTES

[1] The Committee on Standards of Official Conduct has determined that certain matters are excluded from the honorarium ban such as compensation for activities where speaking, appearing or writing is only an incidental part of the work for which payment is made; witness or juror fees; fees to qualified individuals for conducting worship services or religious ceremonies; payments for works of fiction, poetry, lyrics, or script; or payments for performers who appear on stage. *House Ethics Manual*, 102nd Congress, 2d Session, April 1992, pp. 93–94.

[2] Id., p. 94.

[3] Id., p. 95.

[4] Id.

[5] Id., pp. 94–95.

[6] ''Summary Outline of Restrictions on Outside Earned Income for Executive Branch and Members of the House, Including Payments for Writing a Book,'' by Jack Maskell, Legislative Attorney, American Law Division, Congressional Research Service, January 19, 1995, p. 1.

[7] Id., pages 1–2.

[8] ''Receipt off Honoraria or Other Outside Income by Officers and Employees of the Federal Government After the Supreme Court Decision in United States v. NTEU,'' by Jack Maskell, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress, p. 1.

[9] Maskell, ''Summary Outline of Restrictions . . . .,'' op. cit., pp. 2–3, citing Office of Government Ethics Advisory Letters 86 X 4, April 10, 1986; 82 X 18, December 3, 1982; 89 X 17, September 26, 1989: ''Income attributable to the former, such as an advance on royalties, is 'earned income' while retention of a royalty interest following publication is a mere property right in the residual income stream.''

EXECUTIVE BRANCH RULES ON ROYALTIES

Mr. SOLOMON. Mr. Speaker, there has been some confusion sown about what rules currently apply to top level executive branch officials. As I have indicated, the President, Vice President, Cabinet officers, and Presidential appointees are barred from receiving any advances on book royalties, but may receive unlimited royalties.

I cite as my authority a report of the American Law Division of the Congressional Research Service dated January 19, 1995, by Legislative Attorney Jack Maskell, and I quote:

> Cabinet level officials—and all other officials appointed by the President to a full time, noncareer position—are barred completely from receiving any outside earned income [by] Executive Order No. 12674, section 102, April 12, 1989.

And, according to the American Law Division memorandum, citing several Office of Government Ethics Advisory letters, and I quote:

> Advances on royalties and some other publication payments and contracts have been . . . considered to be earned income subject to the earned income limitations.

Since top level executive officials can receive no earned income, they are barred from receiving any advances.

Other senior, noncareer executive branch employees earning over $81,000 are subject to the 15-percent cap when it comes to advances.

With respect to book royalties for executive branch officials, the American Law Division memorandum says the following, and I quote:

> Royalties after the publication of a book are considered as a return on one's intellectual property (copyright)—that is, unearned income such as investment income, and are not considered outside earned income.

The memo cites the regulation from volume 5 the Code of Federal Regulations at section 2636.303(b)(5).

In summary, Mr. Speaker, the President, Vice President, Cabinet members, and other Presidential appointees are barred from receiving book advances but are not limited with respect to book royalty income.

RESPONSE TO ARGUMENT OF DIFFERENT ADMINISTRATION RULES

Mr. Speaker, the argument has been made that my substitute does not put us on the same plane as our executive branch counterparts because they would still have different rules and regulations on other forms of earned or unearned income.

That may well be, but it is irrelevant to this debate. I am simply arguing today that, when it comes to book royalties and advances, we should adopt the same rules that both President Bush and President Clinton and their Office of Government Ethics thought were advisable.

So to drag in extraneous arguments and rules relating to other differences between the House and the executive branch is a smokescreen, plain and simple.

All I am asking is that, when it comes to book royalties and advances, the Vice President and the Speaker be treated the same. To imply that it is OK for one to receive unlimited royalties, but not OK for the other to do so, flies in the face of common sense and logic.

Either royalties are bad and unethical once they reach a certain amount, or they are not. The Office of Government Ethics has found under Democratic and Republican administrations alike that they do not pose an ethical problem. To now say that unlimited royalties are ethical for a Democratic Vice President but not for JERRY SOLOMON is an insult to the integrity of this House and to the intelligence of the American people. Let's not obscure the central issues and facts of this debate with smoke.

RESPONSE TO ARGUMENT THAT SUBSTITUTE PERMITS UNLIMITED ROYALTIES ON MATTERS OTHER THAN BOOKS

Mr. Speaker, I am astounded at the new smokescreen being thrown up here that my substitute somehow creates a new loophole for copyright royalties from matters other than books.

The Ethics Committee argues that it currently permits unlimited royalties only from books, and that other copyright royalties on things like records or songs are subject to the 15-percent outside earned income cap.

The fact is that I have used the same terminology as the Ethics Committee's resolution, and therefore it should be subject to the same interpretations that now apply to different categories of copyright royalties.

Just as the Ethics Committee's resolution talks about publications, publishers, and literary agents, so too does my substitute. Nowhere in either the resolution or my substitute is the word ''book'' used—anymore than it is used in the current House rule regarding copyright royalties.

Therefore, if the current exemption for copyright royalties is interpreted by the Ethics Committee to mean that it only applies to book royalties, then the same interpretation would continue to apply if my substitute is adopted.

The ethics committee could have taken a broader interpretation of the term ''publication'' since, under the copyright law, found in title 17 of the United States Code, at section 101, the term is defined as, and I quote: ''the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease or lending.'' End quote. Moreover, the term ''literary works'' are defined by section 101 of title 17 to include, and I quote, ''books, periodicals, manuscripts, phonorecords, film, tapes,'' et cetera.

But, if the Ethics Committee currently interprets the term ''publication'' to mean the publication of a book, and the term ''literary work'' to mean only a book, then that will continue to be the case if my substitute is adopted since I have not, by the language of my substitute or by this legislative history, said anything to broaden that definition or interpretation.

RESPONSE TO ARGUMENT THAT ROYALTIES MAY BE PERCEIVED AS CAPITALIZING ON OFFICE

The central argument used by the Ethics Committee in recommending not only a ban on advances but a limit on royalties is that such income ''creates the impression of exploiting one's office for personal gain.''

This argument conveniently blurs the distinction between advances, which are payments made up front before knowing how well a book will sell, and royalties which are based solely on the popularity of a book with the buying public.

My substitute recognizes that there is an appearance problem with advances given to a government official.

That is currently banned in the executive branch for top officials and would be banned by my substitute. But, to go on to argue that receiving royalty income based on sales is somehow unethical because someone is a government office holder or appointee is a bogus argument.

A book does not become a best-seller just because the author is well-known. There are plenty of books that have not made substantial profits that have been written by authors who have had previous best-sellers, regardless of their names, positions, or previous works.

I do not recall any great public uproar over the fact that Vice President GORE'S book on the environment, ''Earth in the Balance,'' became a best-seller. People did not charge that he was taking undue advantage of his position in government. It was widely accepted that the book sold well because he had something to say, and said it well, and that many people were therefore willing to spend money to buy the book.

Let's not set a double standard for books by liberal authors and books by conservative authors. It shouldn't make a difference what the ideological stripe of the author is except with those who think it is sinful for conservatives to make money but somehow simply fortunate that liberals can reap profits occasionally from peddling their ideas.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

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

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

Mr. SOLOMON. Mr. Speaker, I object to the vote on the ground a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 380, nays 11, answered ''present'' 1, not voting 41, as follows:

[Roll No. 881]

YEAS—380

Abercrombie
Allard
Andrews
Archer
Armey
Bachus
Baker (CA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Bono
Borski
Boucher
Brewster
Browder
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bryant (TX)
Bunn
Bunning
Burr
Burton
Buyer
Camp
Campbell
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (IL)
Combest
Condit
Cooley
Cox
Coyne
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Durbin
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Eshoo
Evans
Everett
Ewing
Farr
Fawell
Fazio
Fields (LA)
Flake
Flanagan
Foglietta
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Furse
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gilchrest
Gillmor
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Johnson (CT)
Johnson (SD)
Johnson, E.B.
Johnson, Sam
Johnston
Jones
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lightfoot
Linder
Livingston
LoBiondo
Longley
Lowey
Lucas
Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McCollum
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McKeon
McKinney
McNulty
Meehan
Menendez
Metcalf
Meyers
Mfume
Mica
Miller (FL)
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myrick
Nadler
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Orton
Oxley
Packard
Pallone
Parker
Pastor
Paxon
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Rose
Roth
Roukema
Roybal-Allard
Royce
Rush
Sabo
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder
Schumer
Scott
Seastrand
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stark
Stearns
Stenholm
Stockman
Stokes
Studds
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thompson
Thornberry
Thornton
Thurman
Tiahrt
Torkildsen
Torres
Torricelli
Traficant
Upton
Velázquez
Vento
Visclosky
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Ward
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Woolsey
Wynn
Yates
Young (FL)
Zeliff
Zimmer

NAYS—11

Baesler
Brown (CA)
Clay
Costello
Hastings (FL)
Hinchey
Kanjorski
Klink
Miller (CA)
Waters
Watt (NC)

ANSWERED ''PRESENT''—1

Gunderson

NOT VOTING—41

Ackerman
Baker (LA)
Becerra
Berman
Bevill
Callahan
Calvert
Collins (MI)
Conyers
Cramer
Edwards
Fattah
Fields (TX)
Filner
Ford
Gallegly
Gibbons
Gilman
Green
Gutierrez
Harman
Hayes
Jacobs
Jefferson
LaFalce
Lantos
Lincoln
Lipinski
Lofgren
Manzullo
Meek
Myers
Neal
Owens
Quillen
Quinn
Ros-Lehtinen
Towns
Waxman
Wyden
Young (AK)

□ 1127

Mr. MILLER of California changed his vote from ''yea'' to ''nay.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. GILMAN. Mr. Speaker, I regret that I was inadvertently delayed and was prevented from voting on rollcall No. 881, a rule for the consideration of House Resolution 299. Had I been present to vote I would have voted ''aye.''

□ 1130

GENERAL LEAVE

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and insert extraneous material in the RECORD on House Resolution 322, the resolution just adopted.

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