

Agreements that call for continued dialogue and peace like the Shimla agreement could provide an ideal framework for this purpose.

With or without nuclear weapons, India is and will be a world power. The question for America is whether we can build a relationship that permits the United States and India to begin the next century as partners. America must acknowledge the reality of a strong, modern India. We must voice our disagreements, but in the context of celebrating our shared values and vision. Close to 1 million Americans of Indian origin live in the United States and contribute greatly to the economic, cultural and technical development of our country. I have full confidence that America can and will embrace this challenge.

TO COMMEMORATE THE CONTRIBUTIONS OF HORACE C. DOWNING

**HON. ROBERT C. SCOTT**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, July 22, 1998*

Mr. SCOTT. Mr. Speaker, I rise today to pay tribute to Horace C. Downing, my good friend and long-term community leader in the Third Congressional District of Virginia.

Mr. Downing was born on February 26, 1917. He has amassed a commendable record of community leadership based on a tradition of leading by example. It began with the example he set as a dedicated family man, who, along with his wife Beryl, raised four children who have given them eight grandchildren.

At the age of 81, Mr. Downing remains active in his community as he has been for all of his adult life, including the period of his service to the greater community while in the US Army from 1949 to 1952. He served during the Korean War with the Quartermaster Battalion and the 24th Infantry Combat Team as a non-commissioned officer.

After leaving active duty in the military Mr. Downing threw himself into the community serving first as a supervisor for the Housing Improvement Program of Norfolk, Virginia where he was quickly promoted to Community Relations Officer as a result of his diligent and effective leadership. While in his position with these Housing programs, he became involved in the most important community service endeavor of his career—his work on behalf of the children of his community. As a founder and past president of a number of youth and civic organizations in the Berkley community, Mr. Downing has more than earned the honor of being known affectionately as the "Mayor of Berkley".

Mr. Downing went on to found or hold membership in thirty-five different organizations. These memberships range from community parent/teacher associations, human resource and business groups, the NAACP and youth groups to city-wide and state-wide organizations.

Mr. Downing demonstrated to the students that surrounded him the value of the concept of life-long learning by continuing his education into his sixties. At a time when students and young people are inundated with negative images and lack role models who show true care for them and the problems they face, he

has been a beacon of light for them. While many in our community have written young people off as apathetic and uninvolved, Mr. Downing has founded organizations that promote political and civic responsibility in young people.

Mr. Downing has been honored by the VA Extension Service, Norfolk Public Schools, Norfolk Model City Commission, Virginia Federation of Parent Teachers Associations and other organizations in his community and across the state. So, it is with honor that I call attention to his contributions before the Congress and the nation and I ask that these remarks be made a part of the permanent records of this body. Thank you, Mr. Speaker.

SECURITIES LITIGATION UNIFORM STANDARDS ACT OF 1998

SPEECH OF

**HON. ANNA G. ESHOO**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, July 21, 1998*

Ms. ESHOO. Mr. Speaker, it is with great pride that I rise in support of H.R. 1689, the Securities Litigation Uniform Standards Act of 1998. Over a year ago Representative WHITE and I introduced this legislation. Since then there has been a groundswell of support for this legislation. The Senate approved the companion bill, S. 1260, by a vote of 79–21. The Securities and Exchange Commission and the Clinton Administration have endorsed the legislation. The House bill we are considering today has 232 cosponsors. Today, under Suspension of the Rules, the House will pass this important piece of legislation.

I want to thank you Chairman BLILEY for the open way you have worked to bring this bill to the floor. In the past few months both the majority and minority side have worked to tighten and clean up the bill language before us today. I believe it is a much improved product.

As the primary Democratic sponsor, let me briefly discuss the need for this bill.

In 1995, Congress passed the Private Securities Litigation Reform Act. This law represented a bipartisan attempt to deal with the problem of meritless "strike suits" filed against high-growth companies. In most instances, these cases were settled out of court because companies made the calculation that it was cheaper to pay off the strike suit lawyer than become engaged in a protracted legal fight.

These class actions have had a considerable impact on the high technology industry, especially those in Silicon Valley which I have the privilege to represent. High technology companies account for 34% of all the securities issuers sued last year, and 62% of all cases are filed in California. It's ironic that the very companies that have contributed disproportionately to the economic health of our nation and have been a great source of wealth for investors are the ones being harassed. They are being penalized for success.

The 1995 reforms are now being undermined by a shift to state courts of cases involving nationally traded securities, which prior to 1995 were heard in federal courts. Analysis shows a clear motivation for this shift to state courts. The SEC staff report found that 53% of the cases filed cited claims based on forward-looking statements. Also, as Chairman Levitt

pointed out in testimony last year before the House Commerce Committee, 55% of the cases filed at the state level are essentially identical to those brought by the same law firm in federal court.

Migration to state courts is not a minor problem. It represents an undermining of core reforms implemented in the 1995 Reform Act, because the Reform Act relies on uniform application and enforcement of the law to be effective. Without this uniform standard, the law is undermined, the strike suits continue, and companies and investors are held hostage. This is particularly true for two key elements of the 1995 Reform Act: Safe Harbor and Stay of Discovery.

When companies refrain from disclosing information about their projected performance, investors are unable to make informed decisions. Most companies are eager to talk about what they are doing. But the threat of meritless suits places a chill on disclosure. This is because any Wall Street analyst's expectation can cause a company's stock to fluctuate, even if the company is growing at a rate of 20% or 30%. Those filing the strike suit then claim that any forward-looking statement, even if it was clearly an estimate and not a promise of stock performance, is grounds for a civil action.

Companies responded by ceasing to make forward-looking statements. The 1995 Reform Act instituted a safe harbor for companies making forward-looking statements as long as those statements were not false or misleading. However, because of the threat of actions in state courts where there is no safe harbor, this provision still has yet to be implemented. I've received letters from hundreds of business leaders who say they will continue to refrain from making forward looking statements as long as the threat of litigation not covered by safe harbor remains. As a result the most investor and consumer-friendly portion of the 1995 Reform Act is not being used.

The second key element of reform is the stay of discovery pending motions to dismiss. Discovery is often the most costly part of the litigation process. It's especially burdensome when plaintiff lawyers tie up executives' time and request, literally, millions of pages of documents. As long as this threat is present, companies will have a greater incentive to settle early and avoid the cost of discovery than fight—even if the case has no merit. To counter this problem we enacted a stay of discovery in the 1995 Act. This does not prohibit plaintiffs from filing their cases, nor does it prohibit cases that have merit from moving forward. It merely delays the discovery process until a judge can rule on a motion to dismiss.

Because of the shift to state courts, the stay of discovery is not in place. The threat of huge legal costs remains and the incentive to settle meritless cases continues. Even worse, plaintiff lawyers are able to file a case in state courts, go through a process of discovery—basically a fishing expedition—and then take those documents into federal court.

It is this undermining of the federal law that prompted Representative WHITE and I to introduce our bill. I would like to make clear that the bill is not a federal power grab. We are returning to federal courts cases which until the 1995 Reform Act had always been heard in federal courts. It is limited in scope, and only extends to private class action lawsuits involving nationally-traded securities. State regulators and law enforcement officials maintain