warned that we are headed toward a failure in the census. We believe that before America spends $4 billion on the census done by polling, we should find a way to do it the way we have for 200 years, by counting each American.

MANAGED CARE REFORM

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

Mr. GREEN. Mr. Speaker, I want to share with my colleagues a letter I recently received from two Republican State legislators from Texas.

Representative John Smiteh, Chairman of the House Committee on Insurance, and Senator David Sibley, Chairman of the Committee on Economic Development opened their letter with a plea to Congress not to disturb the substantial progress already achieved in Texas on managed care reform. Their letter is written because the two Republican leaders of the legislature in Texas read the Gingrich Insurance Protection Act that was passed by the House and they know what it would do to the protections already passed by the Texas legislature. It would render them useless.

In place of the strong patient protections passed in Texas, which include HMO accountability, binding independent reviews, coverage for emergency care, and the elimination of gag clauses, Texas would be left with a sham bill that for every patient protection, it gives the insurance companies a loophole they can drive a truck through because of the bill that passed on this floor.

Like many States around the country, Texas has passed laws that meet the needs of its citizens to deal with in-adequate health care and the elimination of gag clauses. Unfortunately, it gives the insurance companies the ability to speculation and guesstimating by utilizing polling techniques. That is what exactly has been proposed by the President.

What the gentleman from Kentucky (Mr. ROGERS), the chairman of the committee, has proposed is that the decision be made next spring. That is under agreement by the President, by the Census Bureau, the decision should be made next spring. That is when we should face the decision.

Unfortunately the gentleman from West Virginia (Mr. MOLLOHAN) says, “Congress, you’re not relevant in this decision. We think only the President knows best to decide and we’ll let the President decide and we’re not interested in what Congress has to say on the issue.” What we believe is it should be a bipartisan decision next spring when all the facts are in, we can make the decision, not now, and we should have an agreement with Congress, the Democrats and the Republicans and the Administration. That is what we want to do. I hope everybody will vote down the Mollohan amendment.

Providing Amounts for Further Expenses of Committee on Standards of Official Conduct

Mr. NEY. Mr. Speaker, I ask unanimous consent that the Committee on House Oversight be discharged from further consideration of the resolution (H.Res. 506) providing amounts for further expenses of the Committee on Standards of Official Conduct in the second session of the One Hundred Fifth Congress, and ask for its immediate consideration.

The Clerk read the title of the resolution.

The SPEAKER pro tempore (Mr. PETERSON of Pennsylvania). Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 506

Resolved, SECTION 1. FURTHER EXPENSES OF THE COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT.

For further expenses of the Committee on Standards of Official Conduct (hereafter in this resolution referred to as the “committee”), there shall be paid out of the applicable accounts of the House of Representatives not more than $200,000.

SEC. 2. VOUCHERS.

Payments under this resolution shall be made on vouchers authorized by the committee, signed by the chairman of the committee, and approved in the manner directed by the Committee on House Oversight.

SEC. 3. LIMITATION.

Amounts shall be available under this resolution for expenses incurred during the period beginning at noon on January 3, 1999, and ending immediately before noon on January 3, 1999.

SEC. 4. REGULATIONS.

Amounts made available under this resolution shall be expended in accordance with regulations prescribed by the Committee on House Oversight.

The Committee on House Oversight shall have authority to make adjustments in amounts under section 1, if necessary to comply with an order of the President issued under section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 or to conform to any reduction in appropriations for the purposes of such section 1.

The resolution was agreed to. A motion to reconsider was laid on the table.

Mr. ROGERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the further consideration of the bill, H.R. 4276, and that I may include tabular and extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

The SPEAKER, pro tempore. Pursuant to House Resolution 508 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4276.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole.
Mr. MOLLOHAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the purpose of my amendment is to again focus the census debate on the issues of science and accuracy and remove, to the extent possible, the political influences which have been overbearing with regard to this issue.

The bill before us today would seriously jeopardize the 2000 census. The good news is that the bill provides $307 million more for census preparation than the President requested. The bad news is that what the bill gives with one hand, it takes away with the other. How?

First, it cuts off funding for the preparation of the 2000 census in the middle of the fiscal year, and any expenditure thereafter will be dependent upon passage of additional legislation. This language could cause a sudden shutdown of census preparations with irreversible consequences, in the not unlikely event that Congress and the President are unable to agree on that.

Second, the reason this bill takes away from the census is it only allows for half of the funds to be spent until the cutoff period. By dividing the appropriation in half, the majority would have moved forward unless the Supreme Court specifically rules that sampling is unconstitutional. If the Supreme Court finds that sampling is allowable under the Constitution or does not make a clear determination, then sampling will move forward. If the Supreme Court finds that it is unconstitutional, the Census Bureau will have to obligate about $644 million during the first 6 months of the fiscal year. In fact, the Census Bureau needs to obligate about $644 million of the $952 million appropriation during that first half time period. This creates a shortfall of about $169 million.

Why has the Republican majority proposed such a disruptive funding scheme? At the heart of this matter is why has the Republican majority proposed such a disruptive funding scheme? At the heart of this matter is whether, in the judgment of the Academy (or the time for appealing such cases to the Court), the Bureau of the Census should be able to continue to plan, test, and prepare to implement a 2000 decennial census using statistical sampling methods and report to the Congress, not later than March 1, 1999, regarding whether these plans are consistent with past recommendations made by the Academy, and whether, in the judgment of the Academy (or an expert committee thereof), these plans represent the most feasible means of producing the most accurate determination possible of the actual population?

The CHAIRMAN. Pursuant to House Resolution 508 and the order of the House of Thursday, July 30, 1998, the gentleman from West Virginia (Mr. MOLLOHAN) and the gentleman opposed each will control 1 hour.

The Chair recognizes the gentleman from West Virginia (Mr. MOLLOHAN).

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Why has the Republican majority proposed such a disruptive funding scheme? At the heart of this matter is whether, in the judgment of the National Academy of Sciences, the use of statistical sampling methods to count the actual population is constitutional. Under President Carter, President Bush and President Clinton all concluded that the Census Bureau would be able to continue to plan, test, and prepare to implement a 2000 decennial census using statistical sampling methods and report to the Congress, not later than March 1, 1999, regarding whether these plans are consistent with past recommendations made by the Academy, and whether, in the judgment of the Academy (or an expert committee thereof), these plans represent the most feasible means of producing the most accurate determination possible of the actual population.

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simply defer to the experts on this matter: The National Academy of Sciences, the American Statistical Association, the Council of Professional Associations on Federal Statistics, the National Association of Business Economists, and a number of other professional organizations that have endorsed the use of scientific sampling in the 2000 Census. To ensure that the scientific community stays involved in this process my amendment asks the National Academy of Sciences to take yet another look at the Census Bureau’s plans and to recertify that they are indeed the best way to achieve an accurate 2000 Census.

In the third argument, Mr. Chairman, opponents of sampling say that the Commerce Department will politicize the results of the Census. Well, I do not share this view. Its nature makes it impossible to refute through fact or expert opinion. But this concern was addressed last year with the creation of the Census Monitoring Board. This entity is already in place and will be the eyes and ears of Congress as plans for the Census move forward.

In addition, I do not know of any better way to create confidence in the methodology of this process than to go forward and conduct the Census as the experts have recommended. Mr. Chairman, let me start by reminding Members this bill is conducted using a method scientifically sound and based on the work of the experts.

Mr. Chairman, having addressed the three most expressed concerns against sampling, only one remains: fear, fear that using sampling will affect the political makeup of the United States House of Representatives. Well, we must be careful in ascribing motives to people for their actions. In this case, the Republicans argument about the consequences of an accurate census is well understood. As an example, be sure to read any one of the following editorials:

The Christian Science Monitor dated April 28, 1998; the Buffalo News, June 15, 1998; Newsday, June 16, 1997; or the Houston Chronicle, June 4, 1998, and these are just a few examples of a long list of editorials that all endorse the use of scientific sampling in the way to count of one of our population, those 4 million people who were not counted in 1990, and each editorial in its own way criticizes the Republican majority for its political motives for opposing sampling.

The extent to which anyone is opposing sampling because of potential political consequences I would only say that such motives are truly unworthy and misplaced in the world’s greatest democracy which absolutely requires fair representation for all of its constituent groups. Well, Mr. Chairman, that can only be achieved through the most accurate census possible, a principle clearly understood by the framers of the Constitution and a goal which every nonbiased expert who has spoken on the matter says can best be achieved in the modern era through the use of scientific sampling.

Mr. Chairman, I urge my colleagues to vote for my amendment. Mr. Chairman, I reserve the balance of my time.

Mr. ROGERS. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from West Virginia (Mr. Mollohan).

The CHAIRMAN. For purposes of controlling time, the gentleman from Kentucky is recognized for 60 minutes.

Mr. ROGERS. Mr. Chairman, I yield myself 9 minutes.

Mr. Chairman, let me start by reminding the Members what this bill does with respect to the decennial census and why.

Last year on this bill the Congress and the White House agreed to disagree whether the census would be conducted using a hard count or using an untested and legally questionable method known as sampling. My colleagues always refers to it as scientific sampling. It is sort of like a toothpaste or patent medicine, scientifically proven, but whose effectiveness is yet to be shown. This bill will therefore provide that all this scientific sampling, as we hear.

So there is a temporary agreement between the President and the Speaker of the House, and what did it say? The agreement said, “We will hold off on a final decision whether or not to use sampling until the spring of 1999.” At that time it was agreed that Congress and the White House would elect the method of counting in time for the Census Bureau to finish its final plans for the Year 2000 count.

What did we agree would occur in the meantime? One, we agreed to test each method using dress rehearsals in three cities this year; it is going on right now. Two, the parties on each side would have the opportunity to test the legality and constitutionality of sampling in the federal courts in an expedited fashion. The Supreme Court has never ruled on this question, and those cases, by the way, are now going on. Three, we would appoint a bipartisan census monitoring board to oversee all aspects of the decennial census, as is being planned and carried out. That monitoring board now is in session, is meeting regularly.

That was the agreement, the President and the Speaker: Let us have a cooling-off period, let us proceed with plans to use both methods, let us let the courts rule as they may with a D-Day of next spring to make the final decision when hopefully all three of these conditions would have matured.

So what does the bill do that we drafted?

My colleagues, simply implements the pledge which the President wants us to do. We provide a total of $956 million to fund preparations for the Census. That is $566 million over current spending. We added $107 million on top of what the President requested in order to have the staff and resources that the Bureau later admitted it needed to be fully prepared regardless of which method they eventually settled upon. So, we gave them more money than they asked for so they can prepare for both procedures. We allow the first half of the money in the bill, $475 million, to be spent immediately so that necessary census preparations can continue through March 31, 1999. This is pursuant to the agreement the President asked us to do.

Second, we provide the second half of the money, $475 million, once a final decision on a counting method is agreed to by the Congress and the administration as they agreed last year to do.

To ensure that the Congress and the administration reach an agreement the bill requires the following:

By March 15, 1999, the President must request the funds that he needs to be ready to test both methods and must tell Congress how much the census at that time will cost, after we have heard the court, hopefully, after we have heard the monitoring board, hopefully, and after the dress rehearsals in three cities around this country have been completed.

The Congress must enact, and the President must sign, a bill to release the money, and the bill states that Congress shall act on the President’s request by March 31. We bind ourselves.

Submit the request to us by March 15, 1999, we guarantee we will act on that request 2 weeks later, by March 31, and off we go doing the Census.

We have done everything in this bill we can, Mr. Chairman, to facilitate, to live up to the agreement the President asked us to do last year. It is all there, plus some.

The Mollohan amendment on the other hand would strike the very provisions in the bill that the President wants us to put in the bill last year and instead gives the administration complete authority over how the Census is conducted contrary to the Constitution and the Federal statutes which give the Congress control over how the Census is conducted.

Neither his amendment, nor the administration which now supports it, seeks to live up to the agreement of last year. They are abandoning the agreement the President solemnly asked us to put in the bill last year and instead gives the administration something far more destructive than the amendment the gentleman from West Virginia is advocating, advocating a complete cut-off of funds for every other agency in this bill next spring until we agree to his sampling, as he wants to in the Census.

Yes, this President says: “Oh no, don’t give us half the money for the Census and fund all the other agencies.”

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Cut off all the agencies along with the Census in March,” the President says, “and let’s shut down the Drug Enforcement Administration, let’s shut down
In fact, the title of the GAO report says it all: "Preparations for the Dress Rehearsal Leave Many Unanswered Questions." That is what GAO titles their report. Maybe that is why the administration no longer wants to wait until next spring to settle with the Congress on a final decision.

Or maybe it is because the administration is afraid the courts will rule sampling to be illegal or unconstitutional. That would explain why the administration's own lawyers have been fighting vigorously in Federal court to get the pending lawsuits thrown out on procedural grounds, so that the courts will not rule on the merits of this issue in time for next spring's decision.

Mr. Chairman, I tell my colleagues, make no mistake about it, if the Mollohan amendment is adopted, the very success of the 2000 Census is in jeopardy for the first time in America's history. If the Mollohan amendment is adopted, the Congress will have no say in the conduct of the census, contrary to the Constitution.

We will not get to make a decision based on the dress rehearsal results or the reports from the bipartisan, independent Census Monitoring Board. We will not get to decide based on the court rulings. In fact, we will not make a decision at all. Instead, the Mollohan amendment asks us to trust the Clinton White House; defer to the same Clinton administration which pilfered through the FBI confidential files, which naturalized thousands of felons so they could vote; the most investigated administration in the history of the country; they say, trust us again.

Mr. Chairman, there is an old saying back in Kentucky, "There ain't no education in the second kick of the mule." We have learned a bit about this White House. "Trust us," they say. We say, "Okay, we will trust you, but we are going to verify with an actual count. We do not trust you to guess on the numbers of people in the country for the purposes of deciding who can represent us in this Congress." That is all we are saying. They may sample if they will on the number of people with blue eyes, but actually count the people when it comes to making up this body that represents all the American people for all that is in the Constitution.

The American people have a right to expect that this Census will ensure the integrity of the very process that determines the nature of their representation in the House.

For that reason, Mr. Chairman, I urge the House to live up to the agreement we reached with the White House. I urge the White House to live up to the agreement they reached with us, and vote down the Mollohan amendment.

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

Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentlewoman from New York (Mrs. MALONEY), ranking Democrat on the Committee on Government Reform and Oversight, who has worked incredibly hard on this issue. She has been at the forefront of ensuring that we have a fair 2000 Census.

Mrs. MALONEY of New York. I thank the gentleman for yielding time to me, Mr. Chairman, and congratulate him on his outstanding leadership on this job.

Mr. Chairman, I rise in support of the Mollohan amendment, which will fully fund the Census 2000 so that they can merely get the job done. We should let the Census Bureau be the Census Bureau, and the Republican majority should stop interfering with the Census Bureau doing their job. The Nation needs an accurate count of our population, one that includes everyone.

In 1990 the Census missed 8.4 million people, one in 10 black males, one in 10 Hispanics, and one in 20 Asians was missed. Conducting a fair and accurate Census has become the top issue of the nineties. The Census Bureau is working to implement a plan that is inclusive. It is modern, cost-effective, and comprehensive, and it will eliminate the undercount.

The President says, "Let us shut down the FBI, the War on Crime, let's shut down the FBI and the War on Drugs and the War on Crime, let's shut down the State Department around the world and all of the sensitive things that are going on around the world in America's national security interests."
The year 2000 Census must be about policy, not politics. It is the right thing to do. It is right for America. I urge my colleagues to support full funding for the Census Bureau. Support the Mollohan amendment.

Mr. Chairman, I yield 7 minutes to the gentleman from Florida (Mr. MILLER), the chairman of the Subcommittee on the Census, who happens to also be a doctor in statistics and marketing, and taught for the MBA program at his university, who is an expert on this topic.

Mr. MILLER of Florida. Mr. Chairman, let me congratulate the chairman for his treatment of the Census in this appropriation bill, because what he proposes is basically that the President and Congress, the Democrats and Republicans, need to work together next spring, when the decision needs to be made, and this has to be done in a non-partisan fashion. This is not something we can delegate to some hand-picked panel. This is something we need to work together on.

The reason that this is so political is that the President has proposed a radically different approach, an untested type idea of using polling, because it is the way he loves polling. He does polls every day. Every decision is made based on polling. If it works for him, it should work for the Census.

Many of the Members on that side were in Houston this past June. Let me quote what the President said about the Census when he talked about polling and sampling. Most people understand that a poll taken before an election is a statistical sample. Sometimes it is wrong, but more often than not, it is right. The President compares it with polling. This is what we are talking about.

The American people are not going to trust polling to do something that we only do once a decade. The Constitution talks about it every 10 years. Sampling is very appropriate in between the Census, when we take it every 10 years, but it is too critical an issue to be addressed by polling techniques at this time.

Let me take a minute to explain the difference in the two proposals, because there is confusion. What we propose is basically improving upon the 1990 model, where we counted 98.4 percent of the people. We went out and counted, and enumerated fairly successfully 98.4 percent of the people. Yes, we did miss some people.

Then, the second part was we did a polling sampling technique to try to see if we could adjust the numbers for full enumeration based on sampling and polling. That failed. The one attempt to use a large sampling model on the Census was a failure in 1990. It was not used.

When the Census Bureau tried to adjust it to the data, the fact, they tried to adjust it three different times and never got it right. They were wrong. They were going to wrongly take a congressional seat away from the State of Pennsylvania and shift it to Arizona, and take a seat away from the State of Wisconsin.

It also came out that data is less accurate for a less than 100,000 population. So for towns and cities all across the country, less than 100,000 population, it is less accurate, on average. So if we are talking about accuracy, it is less accurate.

Also, we work with Census tracts, where there are only about 4,000 people in a tract. If there is no question it is less accurate when we get down to that kind of data.

What has the President proposed in the Clinton Census issue? Instead of trying to count everybody, what he only wants to do is count 90 percent of the people. He wants to intentionally not count 26 or 27 million people. We agree to count everybody, yet the Clinton plan says, we are not going to count 26 million or 27 million people, because what we are going to do is poll every 90 percent of the people. We are going to have this virtual population of 26 million or 27 million people. That is what we are talking about, not counting 26 or 27 million, and letting the computer come up with these people by cloning techniques. That is a little scary, what we are talking about doing.

This plan, as the gentleman from Kentucky (Chairman ROGERS) talked about, is a very risky plan. There is a high risk of failure. It is not as accurate to conduct this. The purpose of a Census is for apportionment of representatives.

What are we recommending? Let us improve upon the 1990 model. There are a number of things we can do. For example, 50 percent of the mistake in 1990 they say was the mailing list, the address list, so we need to do a much better job. I commend the Census Bureau for moving in the direction of doing that. In fact, there is $10 million in additional funding for address list development. The Census Bureau is going to go out and verify the addresses. That is exactly what we need to do is get a better mailing list. That will help address 50 percent of the problem there.

We are going to use paid advertising, instead of using free advertising, as we relied on back in 1990. Instead of having ads at 2 o'clock in the morning, we can get them where it is appropriate to the undercounted population. We can target our advertising.

We also should use local people working with the Census. The gentlewoman from Florida (Mrs. MEeks) and I are working on legislation to make it easier, so people can work part-time and not lose any Federal Government benefits, to work on the Census.

For example, the gentlewoman from Florida (Mrs. MEeks) represents a large Haitian population. We should have Haitian-speaking community working on the Census. We need to provide whatever legislation is necessary. We also need to work with outreach.

That is something that was very successful in Cincinnati, Indianapolis, Milwaukee last year. We need to do it throughout the country this time around.

The past week's newspaper in Northern Virginia, the Hispanic newspaper, the cover page talks about the United States Census 2000. It is talking about how we need to have a partnership, where we need to work together. It is talking about Census partnerships: "We cannot do it without you."

It talks about how there are jobs, census jobs, an equal employment opportunity employer. We need to work together in communities, in the undercounted areas, and do everything to concentrate on getting everybody counted, not creating these statistically or computer-generated artifacts.

We also should make use of whatever administrative records are available. If we do that, we need to get the information. The WIC program, for example, a mother may not want to fill out a form but she wants to get formula for her children. We should do everything we can to make records where there is Medicaid or what have you available.

So what we have is a choice of whether we want a census that can be trusted, and working together, or we want to trust only the President to make that decision. Now the President is threatening to shut down the entire Commerce, Justice and State Departments over this issue. That is irresponsible. This is a President that said it was terrible to shut down the government back in 1995, is already threatening it today over this issue if he does not get his way.

So it is wrong to try to threaten to shut down the government. We should not allow that to happen. Let us work together and get the most accurate census possible, where we count everyone, everyone counts. This is the plan, full enumeration, and let us do it together this spring.

Mr. MOLLOHAN. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I yield to the gentleman from West Virginia (Mr. MOLLOHAN).

Mr. MOLLOHAN. Mr. Chairman, I simply want to point out here that the only shutdown associated with this issue is the shutdown that is contained in this bill, the shutdown that is threatened by the language which limits the appropriation for census to mid-year. That is the only shutdown we are talking about.

The President had an agreement with the Republican majority. That agreement was untenable. That agreement is not even a part of this debate. I do not know why we have even alluded to that. The fact is the President is looking at the language in this bill that would shut down the census at midyear next year and that threatens a viable census.
I think it is important to understand that, that the threat to the 2000 census is contained in the bill, and the Mollohan amendment would free that up, allow it to be funded for the whole year.

Mr. WATT of North Carolina. Mr. Chairman, I want to address one of the legal issues that has been raised by the Republican majority.

The gentleman from Colorado (Mr. SKAGGS) will talk about the constitutional issue, but one of the issues that the majority has raised is that the constitutional power of Congress to determine when the census will be conducted is being somehow undermined by the administration. Of course, nothing could be further from the truth.

The Constitution, as the gentleman from Colorado (Mr. SKAGGS) will point out, clearly says that the census will be taken in such a manner as Congress shall by law direct, and the Congress has passed a law, title 13 of the United States Code, that governs the census. We should be under no illusion that the census will be taken and that title, section 141, says that the Secretary of Commerce shall take a census of population in such form and content as he may determine, including the use of sampling procedures and statistical surveys.

The Republicans seem to have a different interpretation of that. But clearly, the statute that is on the books allows, directs the administration of the job to the Secretary of Commerce to take this census with the use of statistical sampling. They seem to think that that is unconstitutional, and that case is going up to the Supreme Court. But several courts have held it constitutional and as long as the law is on the books, that is the law that we are obligated to follow and comply with. That is what we are doing.

That is why we are here today, trying to debate this issue on an appropriations bill when trying to do this frontally. We have got a law on the books that everybody is trying to follow. They have no capacity to repeal the law so they are trying to do by indirection what they cannot accomplish directly.

The language in the statute clearly allows, one would argue mandates, the use of statistical sampling. And the Republican majority is trying to undermine that because they cannot pass a law that repeals that law. They are trying to do this indirectly and they should not allow them to do this. We should pass the Mollohan amendment and move on with the census as the law now currently authorizes us to do.

Mr. ROGERS. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa (Mr. LATHAM), a very able and hardworking member of the subcommittee.

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

I rise in strong opposition to this amendment from the gentleman from West Virginia. Former Prime Minister Harold MacMillan once remarked that the English people did not throw off the yoke of the divine right of kings in order to bow before the divine right of experts. I think there is some truth in that.

In Congress here we have rules that we go by procedurally, but the ultimate rule that we have in Congress is the Constitution of the United States. This is the ultimate rule. Let us just see what the Constitution says about the idea of guessing at how many people there are in America.

Article I, section 2 of the Constitution says: “The actual enumeration shall be made within 3 years after the first meeting of Congress of the United States and within every subsequent term of 10 years in such a manner as they shall by law direct.”

Let us look at the definition of what “enumeration” is.

This is the dictionary that we use here. To enumerate: to mention separately, as in counting; name one by one; specify, as in a list. I think that is pretty clear as to what enumeration stands for.

Also in the Constitution it refers to the census. Article XIV of the 14th Amendment, section 2, very clearly says, “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.”

Okay, if there is any question as to what that means, I think we can also take the dictionary and look at what it is to count. To count: to check over, one by one, to determine the total number; add up; enumerate.

When we were elected or sworn in to this Congress, we stood here and raised our hands that we would uphold the Constitution of the United States. I do not think that there is really a question as to what the Founding Fathers said. It is very clear. It is defined by Webster exactly what the words are.

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

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

Mr. MOLLOHAN. Indeed, the gentleman has referenced the source, the dictionary. Has the gentleman referenced any court decisions on what that means, I think we can also look at Webster, so we can see what the Constitution says about the results of the first census in 1790 because he thought there was an undercount.

Let us take a look at some relevant history here rather than sort of a Sesame Street reading of words.

The census has its origin in the Constitutional Convention. There, Article I, section 2, clause 3 of the Constitution was drafted, and it requires that “The actual enumeration shall be made within 3 years after the first meeting of the Congress and within every subsequent term of 10 years, in such manner as they,” referring to Congress, “shall by law direct.”

According to our Congressional Research Service, examination of the debates and documents of that Constitutional Convention show that earlier reference to a “census” was dropped and “enumeration” was used instead, but there is no suggestion that that was intended to reflect any change in meaning.

The significance of the term “actual enumeration” may be discovered from its context. The same clause of the Constitution goes on to provide for specified numbers of Members from each of the original 13 States “until such enumeration shall be made.” It seems clear therefore that the term “actual enumeration” was intended to distinguish between the rough reckonings of the then-current populations of the original colonies that informed the size of the first House prescribed in clause 3 and the later need for a real count.

The Supreme Court has never determined whether the requirement of an “actual enumeration” precludes sampling or other adjustment, or whether it simply contemplates achieving the most accurate count of the population by whatever method.

As recently as 1996, however, in the case of Wisconsin versus New York, the court came very close. There, relying on the constitutional phrase “in such manner as they shall by law direct,” the court held that “the text of the Constitution vests Congress with virtually unlimited discretion in conducting the decennial ‘actual enumeration.’”

The lower courts that have addressed the issue all have concluded that the requirement of an “actual enumeration” means an accurate count, and that sampling is consistent with the Constitution if its purpose and its effect is to improve accuracy.

For example, in the 1990 ruling, the U.S. District Court of the District of New York, a federal court in New York, concluded “that because Article I, section 2 requires the census to be as accurate as possible, the Constitution is not a bar to statistical adjustment.”
A decade earlier, the Sixth Circuit determined that "although the Constitution prohibits subterfuge in adjustment of census figures for purposes of redistricting, it does not constrain adjustment of census figures if thoroughly documented and applied in a systematic manner." So there can be no real question about the constitutionality of using sampling to improve the accuracy of the actual enumeration. It is for us to decide "in what manner" we shall "by law of Congress." As the gentleman from North Carolina (Mr. WATT) has pointed out, we have done that. The census statute already contemplates the use of sampling and adjustment in order to improve accuracy. That is what this is all about. We should pass the Molloy amendment.

Aside from the constitutional question, history shows us that the level of controversy around the census waxes and wanes as a result of larger, social and demographic shifts and the political pain associated with adjusting to those changes. For example, the census was controversial and prone to political manipulation in the decades before and after the civil war, when there were issues about counting African Americans.

Population counts again became controversial in the 1920's, when census figures showed more people living in cities than in rural areas for the first time. In fact, those results were so alarming to the party in power at the time, that the gentleman simply ignored the census and delayed reapportioning the House.

In short, Mr. Chairman, while this may not be quite deja vu all over again it's certainly not unprecedented—and it's not hard to figure out what's going on. Some of the changes in our country's demographics are uncomfortable for those defending certain conservative interests here. It's projected that by the year 2020, hispanic and African American populations will grow to represent 30% of our total populace. Current censuses, the chairman tells us further, do not get an accurate count of these populations. This is not news. The problem has been known for decades. Yet when methods are proposed to get a more accurate count of minorities, some try to delay or prevent a better count for fear of losing political power.

This year, Republicans are replaying this political battle in a way that is guaranteed not just to undermine progressive census reforms, but in a way that's likely to undermine the census itself. Since they are misguided about the need to require an overworked group of folks over at the Census Bureau to plan for not just one but for two means of collecting population data. And then they want to cut off the Bureau's funds in the middle of the year, calling for a political decision at that time.

Let me restate this crucial point: the majority party in Congress is saying that they middle of the most critical census-planning year, 1999, the Census Bureau has to lurch along with half steps rather than do any full-year planning for a $4 billion, half-million-person project. Would any CEO of any business agree to take on a critical project under these terms? If this bill passes in its current form, does anyone doubt that Republicans next year will find and be able to document Census Bureau organizational problems in putting this so-called plan into effect?

We should not do this, Mr. Chairman. Instead, we should do our duty. We should give the Census Bureau the tools it needs to do its job right and provide the funds and the flexibility to produce the best, most accurate count possible. Pass the Molloy amendment.

Mr. ROGERS. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan (Mr. KNOLENBERG), a member of the committee.

Mr. MOLLOHAN. Mr. Chairman, I yield 15 seconds to the gentleman from Michigan (Mr. KNOLENBERG).

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

I rise today in opposition to this amendment. While I have worked with my distinguished colleague from West Virginia and found common ground on some significant issues, I must disagree with him on this issue because, based on solid numerical evidence which is against sampling, and the Census Bureau's own research after the 1990 Census Bureau enumeration surveys, sampling did not work well in the 1990 census post-enumeration surveys, so why would we expect a similar plan to work for the 2000 census?

Merely increasing the sample size will not improve the accuracy of the survey, it will only increase the possibility of error.

The Census Bureau's own 1992 CAPE report, Committee on Adjustment of Postcensal Estimates, indicated that after the second post enumeration survey, using the improved so-called grouping method, that sampling was accurate for areas under 100,000. Many of us have districts with no single area over 100,000. How can we misrepresent such a large percentage of our population? Furthermore, Mr. Chairman, the Secretary of Commerce concluded in 1993, that while 29 States would benefit from adjusted counts, 21 would be less accurate, or lose population.

We cannot support a plan that is good for some and not for others. Because these numbers are used for apportionment, failing to ensure equal representation is a serious threat to our democracy. Enumerate, not polling, not computer models. Sampling does not equal accuracy.

Not only is sampling numerically unreliable, it is inconsistent, as has been pointed out by my friend from Iowa, with the Constitution, which does require actual enumeration. Nowhere in the Constitution does it state that the President has a right to decide how the census should be directed, which is what he is trying to do.

And despite his statement that it was deeply wrong to shut the government down, that was back in 1996, the President has threatened to shut down the Commerce Department, the Justice Department and the State Department in order to implement his administration's plan. However, we should not support political threats with bad policies.

Congress and the administration must work together to create a plan that the American people will trust. We must listen to the warnings, as the chairman has pointed out, of the GAO and Inspector General to create a bilateral plan with the administration that will accurately represent the American people.

Mr. Chairman, I firmly suggest we oppose this amendment.

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

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

Mr. MOLLOHAN. Mr. Chairman, the gentleman talked about the President conducting the census, and then he said that it is the Congress' job to do that. I totally agree it is the Congress' job to do that, and we have defined in 13 USC section 141, in pertinent part, the Congress, in this language has given the responsibility to Commerce the responsibility to conduct a "decennial census in such form and content as he may determine, including the use of sampling procedures and special surveys."

Mr. KNOLENBERG. Reclaiming my time, Mr. Chairman, sampling simply does not produce the accuracy, as has been pointed out. So I would say to the gentleman that it is not a substitute. Sampling is not a substitute for accuracy.

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

Mr. KNOLENBERG. I yield to the gentleman from Kentucky.

Mr. ROGERS. Mr. Chairman, does the gentleman also know that the Federal statute says, "Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as "sampling"?" but otherwise prohibited. "Except for the apportionment of the House" is in the Federal statute passed by the U.S. Congress.

Mr. Chairman, are you aware of this statute?

Mr. KNOLENBERG. I am.

Mr. MOLLOHAN. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. SAWYER), who has been such a leader on this issue, again ensuring that the 2000 census is a fair one.

Mr. SAWYER. Mr. Chairman, we learned a great deal from the 1990 census, but one thing was crystal clear: Our changing Nation had outgrown past counting techniques and the traditional methodology takes us further and further from getting an accurate count of these populations. This is not news. The problem has been known for decades. Yet when methods are proposed to get a more accurate count of minorities, some try to delay or prevent a better count for fear of losing political power.

This year, Republicans are replaying this political battle in a way that is guaranteed not just to undermine progressive census reforms, but in a way that's likely to undermine the census itself. Since they are misguided about the need to require an overworked group of folks over at the Census Bureau to plan for not just one but for two means of collecting population data. And then they want to cut off the Bureau's funds in the middle of the year, calling for a political decision at that time.

Let me restate this crucial point: the majority party in Congress is saying that they middle of the most critical census-planning year, 1999, the Census Bureau has to lurch along with half steps rather than do any full-year planning for a $4 billion, half-million-person project. Would any CEO of any business agree to take on a critical project under these terms? If this bill passes in its current form, does anyone doubt that Republicans next year will find
Mr. R. O. G. O. R. E. G. E. R. S. E. R. testified eloquently. Of legislators, the gentleman from Kentucky methods and recommend ways to im- Academy of Sciences to review census lican colleagues in asking the National with two of my distinguished Repub- Because of all these mistakes, census numbers at the block level were off by 10 to 20 percent. So let us not pretend that a census without scientific meth- ods is in any way an improvement.

We deal and contend with two of my distinguished Repub- lican colleagues in asking the National Academy of Sciences to review census methods and recommend ways to improve accuracy. One of those colle-agues, from Kentucky (Mr. G. O. R. E. G. E. R. S. E. R.), testified eloquently. Of the 1990 census, he asked, “Were the methods for counting our population, while learning more about it, out- moded? In light of existing sampling techniques, I think they were,” he con- cluded, “What we need, as he said, was an independent review of the census to determine how to meet our data needs, in his words, “in an accurate and cost effective way.” He said that the Na- tional Academy was “credible, experi- enced and, more importantly, inde- pendent.”

I agreed with him then, and I urge all of us to carefully consider the decision we are making now. It comes down to this: Will we take a census in 2000, using methods recommended by those “credible, experienced and independent experts” that the gentleman from Kent-ucky recommended in 1991, or will we settle again for methods that he called “outmoded and dusty”? The gentleman from Kentucky was right in 1991 when he said that, “It has become increasingly clear that we can- not repeat last year’s decennial census process 9 years from now.” The Mollo- ham amendment preserves the chance to take a complete and fair census in 2000. If we reject it out of hand today, we are headed for a repeat of 1990, and that would be tragic: A use of counting techniques that have been demonstrated to be clearly inaccurate. The census has changed dozens and dozens of times over the course of its 210-year history. As the Nation has changed, our ability and techniques for measuring ourselves has changed with it. It is critically important to recog- nize this for building a change. So, on the one we are in now, we need to come to grips with that change. It has never been more important to understand that change, to measure it, and to come to grips with the techniques neces- sary to make a count of our Nation accurate and, most importantly, fair.


DEAR CONGRESSMAN SAWYER: As you requested, I am providing information on studies of the national census that have been conducted by the National Research Council, which is the operating arm of the National Academy of Sciences (December 1997). Three different Acad- emy panels have examined the issue of the use of statistical sampling in the census. All three were comprised of three or more individuals, have reached the con- clusion that the accuracy of the census count can be improved by supplementing tra- ditional enumeration with statistical esti- mates of the number and characteristics of those not directly enumerated. The member- ship of these committees is attached.

I would also like to emphasize the process that the Academy uses in the conduct of studies. Since 1863, the Academy’s most val- uable contribution to American Govern- ment and the public has been to provide un- biased, high-quality scientific advice on controversial, complex issues. The process by which the Academy tackles such a task en- sures its independence from potential out- side influences and political pressures from government officials, lobbying groups, or others. Committee appointments are made by the President of the Academy following careful review of the nominees by many ex- perts in the field of study. Committee mem- bers are selected for the following qualities: one does not seek out a proc- doctologist for heart bypass surgery.

I do wish to make it clear that the Amer- ican Statistical Association takes no posi- tion on the political or constitutional issues surrounding the census. We also express no opinion on details of the specific proposals that have been put forward for the 2000 census. As a professional association of statisti- cians who disagree with the findings of the ASA Blue Ribbon Panel and the several Na- tional Research Council panels which re- ported similar conclusions. Those whose names I have seen lack the expertise and ex- perience in sampling that characterize the panel members. Statistics, like medicine, is a science to which the test of objectivity and accuracy of the count and to reduce costs” is authori- tative.

Mr. Miller, in hearings before his commit- tee, has incorrectly produced produc- tics who disagree with the findings of the ASA Blue Ribbon Panel and the several Na- tional Research Council panels which re- ported similar conclusions. Those whose names I have seen lack the expertise and ex- perience in sampling that characterize the panel members. Statistics, like medicine, is a science to which the test of objectivity and accuracy of the count and to reduce costs” is auth- oritative.

Measurement based on statistical sampling is a well-accepted and widely-used method. The general attacks on sampling that the census debate has called forth from some quarters are uninformed and unjustified. of government statistical offices is a national asset that should be carefully guarded. We depend on the statistical professionals in these offices for information widely used in both government and private sector deci- sions. Attacks on these offices as “politi- cized” damage public confidence in vital data.

Thank you for the opportunity to make these comments.

Sincerely yours,

DAVID S. MOORE,
President, American Statistical Association.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to the gentleman from Kansas (Mr. SNOWBARGER). Mr. SNOWBARGER. Mr. Chairman, I thank the chairman for yielding me this time.

I want to come at this in a little dif- ferent approach. In 1992, I was the user for the first time of reapportion- ment in our State legislature in Kan- sas. We have talked about an accuracy rate back in 1990 of 98.4 percent. I think that is pretty significant.
What people need to understand is that when you are using this census today to develop districts, we are looking on a block-by-block basis. We take one block, add it to another block, we aggregate those blocks together and, somehow or another, we have a representative district of a Senate district or even a Congressional District. Right now, by the census's own numbers, the accuracy rate at the block level is plus or minus 35 percent. Thirty-five percent.

It has been mentioned here several times this morning that sampling is inaccurate at the town and local level. Even the Census Bureau reports that sampling counts are less accurate than an actual head count. It is inaccurate because of this polling scheme. Small towns, including the majority of Kansas, are going to be at risk, and that is a fact.

The Census Bureau's own studies prove this. The 1991 Undercount Steering Group said, "It is understood that for smaller areas, those with less than 100,000 population, proportionately more units would have less accurately adjusted counts than unadjusted counts.

We just cannot use this polling method that penalizes small cities and towns. Not only does this undercount or miscount small towns and cities, but the current scheme also eliminates the right of those cities to contest the numbers. The adjustments are going to occur so late that there is no way for the census Local Review Program to be carried out, which would allow the cities to see if the counts are accurate and make their own input into the Bureau. That has all been taken out because of the timing of this program.

Frankly, the polling population scheme shuts out small town America and denies them the right to challenge. Enumeration is essential, and I would urge my colleagues to defeat the Mollohan amendment.

Mr. MOLLOHAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I rise in strong support of the Mollohan amendment to restore full funding for the Census Bureau so that the agency can get on with the business of conducting an accurate census that includes everybody. Placing a 6-month cap on the funding to the Census Bureau is going to occur so late that there is no way for the census Local Review Program to be carried out, which would allow the cities to see if the counts are accurate and make their own input into the Bureau. That has all been taken out because of the timing of this program.

Frankly, the polling population scheme shuts out small town America and denies them the right to challenge. Enumeration is essential, and I would urge my colleagues to defeat the Mollohan amendment.

Mr. MOLLOHAN. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Chairman, I rise in opposition to the Mollohan amendment. I do not believe politics should play a part in the 2000 census. It is too important to our country.

We all know how important polls are to the Clinton administration. They base most of their decisions on polls. But do we want them to base the 2000 census on a poll? I think not. The American people understand that polls are not very accurate and, as we have heard, even President Clinton understands that. He has called the 2000 census scheme a poll. Sometimes it is wrong, he has said.

Do we really want to use an inaccurate poll as the basis for representation of all levels of government for the next 10 years? Can the American people really trust a census that is based on a poll taken by the Clinton administration? Mr. Chairman, the American people deserve a census that is honest and reliable, one they can trust, not a population poll.

Let me show my colleagues a poll conducted last week by McLaughlin & Associates. People were asked in a scientific survey, a national survey, "Do you approve or disapprove of the Clinton administration's plan to replace an actual head count with statistical sampling in order to conduct the 2000 census?"

Here are the results. Overall, 19 percent approved, 66 percent disapproved, 14 do not know. Black, 33 percent approve, 52 percent disapprove and 14 do not know. Hispanic, 22 percent approve, 62 percent disapprove, 15 percent do not know.

We can see the results.
The Mollohan Amendment will ensure that every citizen is counted.

On the other hand, the Bill, as written, will do more and count less.

Do we really want a repeat of 1990, Mr. Speaker? We have double counted millions and more were not counted at all?

Do we really want to once again exclude poor people, minorities and rural residents? There is an under count in rural areas contrary to some in the majority.

According to the current census data, among all the farms in my state, North Carolina, only three-fourths of one percent are held by women.

And, because of the current data, in 1992, women in North Carolina received only twelve percent of the loans from the Commodity Credit Corporation and only about one-half of one percent of Government Payments.

The data collected by the year 2000 Census will affect social, economic, and political decisions for years and years to come.

The current census data simply does not include many of the women who actually own farms.

This low count can be corrected, in part, but using sampling techniques to supplement the actual count.

The inaccurate picture of women on farms and ranches is also due to the type of information collected by the Census Bureau and the Agriculture Department in their yearly count.

Currently, federal forms allow only one individual to be listed as the “primary producer”—or “owner” of the farm.

If a man and woman jointly own a farm, usually it is the male whose name is on the census form.

If a woman’s name is not on the form, the woman in not counted.

These uncounted women, then, did not have the opportunity to benefit farm training, technical assistance, loans, and other programs that can help farm women.

These women farm owners were not factors in funding decision, setting agricultural policy, and forecasting markets and future needs.

The Mollohan Amendment will give the professional counting experts the resources they need to do the job they must do.

The Mollohan Amendment will ensure that we have a fair count in 2000, a count that treats every American the same.

Mr. Chairman, the Census determines representation and taxation in America. Women farmers and ranchers deserve to be counted. They too are American. I urge support for the Mollohan Amendment.

In 1992, women received only 12% of the Commodity Credit Corporation Loans and .06% of Government Payments.

Additionally, women who work on farms are not adequately counted. In 1992, of the 1.9 million farmers counted nationally: Only 18,816—(less than 1%) were Afro-American; only 29,956—(less than 1.5%) were Hispanic; only 8,346—(less than 1%) were Native American; and only 145,000—(less than 7%) were women farmers.

Without accurate census data, such as that achieved through sampling, in 1992 of the approximately 2,500 farms counted in North Carolina, .075—(less than 1%) were reported as being controlled by women.

Mr. ROGERS. Mr. Chairman, I yield 5 minutes to the gentleman from California (Mr. THOMAS), chairman of the Committee on House Oversight.

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

Mr. THOMAS. Mr. Chairman, I find it interesting that the only way in which anyone can have a disagreement on the question of the census is that Republicans are purely political and the Democrats take the usual high moral ground, they are right and we are wrong.

I love the quote about “telling the truth is a political, not a moral matter,” which was in today’s Washington Post, and I think that sums up a lot of the response of my colleagues on the Democratic side. We are playing politics, they are not.

The Chief of Staff sent a letter saying, “There is no need for a Government shutdown. But if there is one, it will be because Republicans have either not done their time and finished the budget or have decided to short-change critical investments in our Nation’s future.”

The gentleman from Kentucky (Mr. ROGERS) clearly outlined the President’s position. That is, he wants to shut the entire Department of Commerce, Department of State, Department of Justice down, but the President will not have 6 months to do it.

Now, I can understand why he wants to shut down the Federal Judiciary. We know that when he reappointed John Corgi, he was not too happy that the Department of Justice was pretty well shut down. But clearly, the Department of State, the first department created, that department which deals with international relations, ought to at least extend the full year given the President’s emphasis on international relations. Now his statement and White House Chief of Staff Bowles is not a political statement that he wants to shut those down for 6 months.

The gentleman from West Virginia (Mr. MOLLOHAN) I am sure offers a well intentioned amendment. If you have read it carefully, what it does is it locks in the sampling position. Why does he have to lock it in his amendment? Because, frankly, the Constitution is on our side, the laws are on our side, history and precedent are on our side.

But, no. The Democrats cannot make the argument that under the Constitution, article I, section 2; it has to be about race baiting, it has to be about political advantage. It is not possible that Republicans believe the Constitution says what it says.

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

Mr. THOMAS. Mr. Chairman, no, I do not have time to yield. I do not even have enough time to go through the points that I think absolutely need to be made.

If my colleagues will examine what they are asking to do, contrary to current law, is to poll. They use the term “sampling.” Sampling is polling. It is creating a piece and then extrapolating to the whole.

Their argument is that more accurate than counting. Have we had infallible counts in the past? No. Are we bound and determined to do a good job? Yes. Is there disagreement right now? Yes. Will we have more information in February and March? Should we make a decision now? No.

When we take a look at polling, sampling simply fills in the blanks. Probably my colleagues saw Jurassic Park, in which they had most of the DNA code, but they had to fill in the blanks with what they thought was the appropriate profile on the DNA code.

What these people are asking us to do is to count some Americans and then fill in the rest. But it is more insidious than that, because sampling does not just do that. It is not like normal polling, where they take a random sample and assume the universe from that random sample.

What they actually are going to do is count some people and then not count them. They are going to replace people who have actually been counted with virtual people that the statisticians make up. And that is not political.

Let me talk about politics. We created a bipartisan census oversight board to assist us in trying to come to a very difficult, very complex constitutional decision. Guess who they appointed? They appointed a fellow by the name of Tony Coelho. A lot of people know that they do not know who Tony Coelho is.

In 1988, a book was written by Brooks Jackson, who was then a Wall Street Journal reporter, called Honest graft. What he did was follow Tony Coelho around for a year and then wrote a book about what he saw.

He says in the introduction, “Congressman Tony Coelho runs a modern day political machine, a sort of new Tammany Hall, in which money and pork barrel legislation have become the new patronage.”

Tony Coelho did it better than anyone else. He moved rapidly through the ranks of Democratic leadership, became Majority Whip; and then in the
words of those famous poet song-writers. Paul Simon & Garfunkel, he was "one step ahead of the shoe shine, two steps away from the county line; he was just trying to keep his customers satisfied, satisfied."

He resigned from the House of Representives. He is the one that they chose out of everybody in the world to be the key person on this oversight board. Talk about politics.

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise to support the Mollohan amendment.

Mr. MOLLOHAN. Mr. Chairman, I am very pleased to yield 3 minutes to the distinguished gentlewoman from California (Ms. ROYBAL-ALLARD), who also has been a real leader on this issue.

Mr. MOLLOHAN. Mr. Chairman, I rise to support the Mollohan amendment. The census is critical to our country as it is the basis upon which decisions are made that directly impact every community in the Nation. Without a fair and accurate census, States lose their fair share of an annual $170 billion in Federal funds that could support children's education, senior health services, and job training programs. Communities could also lose state and local government funds for services and infrastructure, and many communities will lose jobs and economic opportunities since businesses use census data to make decisions like the hiring and the firing of employees and the opening of new businesses.

Mr. Chairman, the American people cannot afford to have us repeat the grievous mistake of the 1990 census when 4 million people were missed, 80 percent of whom were urban Americans, 50 percent of whom were children, and 80 percent of whom were Latinos, African-Americans, Asian-Americans, and American Indians living on reservations.

And many States lost as a result of the 1990 undercount, as well. For example, the 1 million Californians that were not counted resulted in the State of California losing 1 congressional seat and at least $1 billion in Federal funds.

Mr. Chairman, the stakes are very high. It is outrageous that the Republicans are forcing the Census Bureau to use census data technology that will again miss millions of Americans. If we are willing to ignore communities of people and make then victims of neglect, what does that say about us as a country?

I ask the Republican leadership to put the interest of the country ahead of politics and support the Mollohan amendment to make every person in the country count.

Mr. MOLLOHAN. Mr. Chairman, I yield to the gentleman.

Mr. Chairman, I just want to comment on some of the language being used by the opposition.

Tony Coehlo. I do not know how Tony Coehlo gets in this debate. I guess if on the merits they do not have anything more to say that they start ad hominem discourse or even attack somebody who is not even here. So I hope we do not continue doing that.

Also, I wonder about the use of words like "polling" and "cloning" techniques. These are very unscientific terms. They are disparaging terms. It just makes me have to ask, why does every statistical association, professional association line up in favor of statistical sampling, they do not use words like "polling" and "cloning." These words are not a part of the vernacular of these professionals who recommend statistical sampling in this context.

Finally, Mr. Chairman, I would simply comment on the repeated references to the unconstitutionality of sampling or the court's ruling that sampling is not valid. That is absolutely the opposite. Every Federal district court, circuit court that has looked at this has said this is a sampling and lawful.

Mr. ROGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from Wisconsin (Mr. PETRI). (Mr. PETRI asked and was given permission to revise and extend his remarks.)

Mr. PETRI. Mr. Chairman, I rise in opposition to the Mollohan amendment.

Mr. Chairman, I rise in opposition to the Mollohan Amendment. The Constitution provides for an actual enumeration of our nation's population every ten years.

Speaking of possible tax levies on the states, Alexander Hamilton said in "The Federalist 36," "the proportion of these taxes is not to be left to the discretion of the national Legislature: but is to be determined by the numbers of each State as described in the second section of the first article. An actual census or enumeration of the people must furnish the rule; a circumstance which effectually shuts the door to partiality or oppression." Hamilton was wise. We open ourselves to partiality and oppression if we open the census to manipulation.

From the first constitutionally mandated census in 1790 to the most recent in 1990, our government has used the most modern means available to perform as complete an actual count as possible. For the first time, our census bureau proposes to undertake less than a complete census and then to adjust its count to what experts estimate to be a complete count. One reason advanced for this departure from 200 years of practice is that an incomplete count would save money. Well, this Congress is prepared to spend the money necessary for a first class full enumeration. And, I dare say, recent advances in communications and data technology should enable the bureau to successfully complete a more accurate actual enumeration than ever before in our nation's history.

But doing a 90% count and then adjusting it will be cheaper, more accurate, and fairer," says the census bureau. Leaving aside the fact that you can't possibly know when you have completed 90% because you don't know what 100% is; and leaving aside the fact that the Congress is manifestly prepared to appropriate the funds required for a first class census rather than an economy model, what's the point in adjusting, what's the point in reflecting estimated non-participation in the census process by residents who, for whatever reason, fail to participate? What's wrong is that this is a zero sum game. To the extent the census bureau adjusts the figures to increase the numbers for non-participants, it reduces the representation and flow of Federal funds for others who discharge their civic responsibility to participate in the census process.

And there will be a tremendous price to pay in civic morale if this unprecedented change if forced into effect on a partisan basis.

First of all, whether warranted or not, the fact that this change is insisted upon and forced into effect along largely political party lines will give rise to the belief that the census adjustment is being implemented for partisan advantage.

Secondly, the fact that the change to an administratively determined adjusted census figure is most strongly advocated by those whose power and authority will be increased by this new approach will increase the conviction that the adjusted figure is the result of a search for greater truth, but rather of the pursuit of advantage for those in control of the adjustment process.

And thirdly, the fact that actual participation in the census will no longer really affect the count will result in a decline in participation and in an increase in skepticism, and public cynicism, toward basic institutions of government.

Finally, I plead with my colleagues not to play partisan games that could jeopardize the census. Do not insist, on a partisan basis, for the first time, on an incomplete count and adjustment. Let us go forward, as we always have in the past, with a complete enumeration and do all that we can to make it as complete as is humanly possible. Then adjust if you think it improves things and we will settle it in court.

But to do a partial count and adjustment going in, without even attempting a complete count, will confront us with the courts with a fait-accompli. If the courts then throw out that sampling-based census, we'll have to do it all over again, at tremendous cost, possibly delaying redistricting, and inviting public disgust.

Defeat the Mollohan Amendment!

Mr. ROGERS. Mr. Chairman, I yield 3 minutes to the gentleman from Georgia (Mr. LINDER).

Mr. LINDER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I find it curious how many times the Constitution seems to get in the way of this administration. It did so in Kyoto, when rather than get a treaty agreed to by the Senate, to adopt the Kyoto treaty, it is in effect by regulation. They did it with the INS during the last election.

Now the Constitution is in the way again because they want a poll to find out who lives in America, count 90 percent of them and poll the rest. And guess who they are?

Polling is what statistical sampling is. I know my colleagues do not want
to use that word because the President sent a memo saying do not use that word. They tested it and it does not test very well. But statistical sampling is polling.

I oppose the Mollohan amendment. I support the carefully crafted bill of the gentleman from Kentucky (Mr. Rogers). The chairman has succeeded in crafting an effective plan to ensure that the administration and the Congress jointly decide how to conduct the 2000 Census.

Unfortunately, the Mollohan amendment undermines their plan in favor of an untested, unproven population polling scheme. Supporters of the Mollohan amendment are always quick to cite the National Academy of Sciences as a supporter of their population polling ideas. Unfortunately, much like sampling, the statement appears true in the abstract but falls apart under scrutiny. Is it true that the National Academy of Sciences has created an ad hoc committee to study the census? Absolutely. Is it true that these committees are composed of National Academy member scholars? Absolutely not. In fact, only one Academy member serves on the 15-member committee looking at the 2000 Census.

Are the committee members carefully selected for service? Absolutely not. Are they carefully selected to get a broad range of views? Absolutely not. The committee members come from liberal think tanks and Democrat politics and are chosen because of their pro-polling views.

In my review of the panel members, I could not find a single neutral thinker, much less a conservative one. How easy it must be to get a favorable report from a hand-picked panel stacked with sympathetic thinkers.

When your panel believes in population polling as a concept, the only question they are left with is how, not why or whether.

Mr. Speaker, when answering why or whether to engage in this population estimation, even this much-trumpeted, hand-picked, Democrat-defined population polling panel would agree with me that even if sampling works in theory, it can fail in practice. It can, it has, and it will. I urge my colleagues to oppose the Mollohan amendment and support the bill.

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

Mr. Linder. I yield to the gentleman from Ohio.

Mr. Sawyer. Let me just offer a rejoinder on behalf of the National Academy of Sciences from its president in a letter sent to me yesterday:

Since 1983, the Academy's most valuable contribution to the Federal Government has been to provide unbiased, high-quality scientific advice on controversial, complex issues. Committee members are nationally recognized in their fields, and they serve without compensation. The Academy balances the membership of each committee to ensure that the study is carried out in an objective and unbiased manner with conclusions based solely on the scientific evidence. The committee's draft is then reviewed by independent reviewers, released in final form only after meeting the standards of quality and objectivity set by the Academy.

Mr. Linder. I have no doubt that the chairman thinks he is a fine person.

Mr. Mollohan. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from New York (Ms. Velázquez).

Ms. Velázquez. Mr. Chairman, I rise in strong support of the Mollohan amendment. Not long ago, minority communities were prevented from being represented through violence and repression. Today's method is far more subtle.

Let us be honest. Today's debate is not about the way we should conduct the census. It is about whose voice will be heard and whose voice will be silenced. By not counting minorities, opponents of a fair census can justify slashing resources to these communities. In New York City alone, at least seven Federal programs, including Head Start, the city lost more than $400 million as a result of the 1990 undercount.

Worst of all, political representation will be denied at every level. Think of the message you are sending to minority communities. You are telling the American people that these communities do not deserve proper representation.

My colleagues, conducting an accurate census is a matter of basic fairness and democracy. I urge everyone to vote "yes" on the Mollohan amendment.

Mr. Mollohan. Mr. Chairman, I yield 2½ minutes to the distinguished gentleman from Texas (Mr. Stenholm).

Mr. Stenholm. Mr. Chairman, I ask and is given permission to revise and extend his remarks.

Mr. Stenholm. Mr. Chairman, I rise in support of the Mollohan amendment, quite simply because it would allow the Census Bureau to continue preparation for the 2000 census without the risk of funding disruptions in the middle of their crucial planning process.

We all remember the impossible situation the government shutdown of 3 years ago placed on the ability of government agencies to continue necessary work. I believe it is important that we not place the Census Bureau in that position again as it prepares for one of the most important government functions outlined by the Constitution: obtaining an accurate count of all Americans.

I want to emphasize that accuracy is critical, in fact, the only relevant issue. In the last 1990 census, all acknowledge that millions of people were missed in the 1990 census. While much of the debate on correcting the undercount of the census is centered around the number of people not counted in urban areas, as one who represents a rural district I want to highlight the fact that people in rural areas of the country are missed as well. In fact, some rural areas were undercounted to a greater degree than the entire country.

According to the Census Bureau, the net undercount for the Nation in 1990 was 16 percent, while renters in rural areas were undercounted at a rate of 5.9 percent. That means rural renters were undercounted nearly four times the national average. It is important that we give the Census Bureau the resources necessary to ensure an accurate count for all Americans in rural and urban areas.

The Mollohan amendment ensures the Census Bureau will be able to obtain the most accurate count possible in a cost-efficient manner. In a time when we have such pressing budget needs like home health care, independent oil and gas needs, drought assistance and many other crucial areas, it is not responsible to restrict the Census Bureau from using a cost-efficient plan that utilizes sound science.

The Census Bureau, under the direction of President George Bush and appointee Barbara Bryant and the National Academy of Sciences, developed the Census Bureau's plan to use modern scientific methods to obtain the most accurate count possible; not all of the allegations we have heard today. This came from that individual and that plan and that is the way it should be. This plan is supported by scientists and statistical experts in the field. The plan uses the same methods that determine the gross national product and the national unemployment rate.

On Friday national figures on unemployment rates will be released. I cannot imagine that anyone will rise up and object to questioning the validity of those numbers. Why is it that in so many other government functions, such as unemployment rates, that science is not questioned? Why should we abandon science for partisanship in this issue?

I urge my colleagues to support the Mollohan amendment so the Census Bureau can use its cost-efficient plan to obtain an accurate count in 2000.

Mr. Rogers. Mr. Chairman, I yield 2½ minutes to the gentleman from Arizona (Mr. Shadegg).

Mr. Shadegg. Mr. Chairman, I thank the gentleman for yielding me this time and I rise in very strong opposition to the Mollohan amendment. I oppose it because it is dangerous. I oppose it because it is fundamentally unfair to minorities, and particularly to the most undercounted minority in the last census, and I speak from experience.

In the 1990 census I worked as a lawyer in the Arizona legislature advising the legislature on restricting. I worked every day on census tracks and census blocks. I can tell Members that while
Mr. MOLLOHAN. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I am not a statistician. It just amazes me that some Members in this debate would kind of hold themselves out to making final conclusions about methods of conducting the census and disparaging statistical sampling when they are not experts, I do not think they have been qualified as experts, and they are really ganging up major statistical professional associations in the country, and they are opposing their view that sampling is valid and the best technique to get a real count of the number of people in our country. Let me just say again, Recommending the use of statistical sampling in the 2000 census to get an accurate count of the number of people in this country are none less than the American Statistical Association, the Population Association of America, American Sociological Association, the Council of Professional Associations on Federal Statistics, the Consortium of Social Science Associations, and the National Academy of Sciences rounds out that very distinguished group, just to let folks understand that they are coming against.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. DAVIS). Mr. DAVIS of Illinois. Mr. Chairman, much has been said about this debate. Much is going to be said. But after all is said and done, there are some facts that will remain the same. Fact number one, African-Americans and the poor have been undercounted in this country since 1790. Even the Constitution allowed for African-Americans, for blacks, to be counted as three-fifths of a person. Now there are those who would tell us 200 years later that it is all right now for the poor to be undercounted because they are hard to find. It is all right because you do not know where they are. It is all right because they live way out in rural America. It is all right because they live under the viaducts in big urban cities. The only way that the people of this country will be counted is to pass the Mollohan amendment. We missed almost 9 million people the last time, 9 million of the poorest people in America. Millions of dollars of entitlement moneys should have gone to them and to their cities. It is amazing to me that someone could come to the floor of this House and suggest that sampling is unfair to the minorities in this country.

Mr. Chairman, let us be real, let us be serious. Every newspaper in America, and we do not live by newspapers, but the Chicago Tribune, the Sun Times, the New York Times, Los Angeles Times, Buffalo Times, Commercial Appeal from Memphis to Maine, all of the newspapers have said that scientific sampling and full funding of the Census is the way to go.

Mr. Chairman, I rise today to support the Mollohan amendment for two reasons. First, this amendment strikes language in the bill that restricts funding for the Census Bureau. The amendment allows the Census Bureau to proceed with its plan to conduct the fairest and most accurate Census to date.

The 2000 Census is perhaps one of the most important issues of our day. We are charged with the responsibility to ensure that everybody is counted. Because if you are not counted you do not count. Since the first Census in 1790, there was a significant undercount especially in urban and disenfranchised. 200 years later in 1990, it is estimated that the census missed 8.8 million people.

In Chicago, the City of the big shoulders, the 3rd largest City in the nation, a city with more of the largest concentrations of poverty in urban America, the undercount was about 2.4 percent, or about 68,000 people which translates into at least 2 million dollars of entitlement money which could have and should have been used to feed the hungry, clothe the naked, and provide shelter for the homeless. It is inconceivable that we could allow this to happen again and that is exactly what will happen unless we fully fund and implement a scientific approach to the census. The African American undercount in Chicago was between 5 and 7 percent. Many of us were not counted were people living in cities and rural communities, African Americans, Latinos, Asians, and the poor.

None of us believe that newspapers are all-right, but we must admit that a cross section of them often have their fingers on the pulse of the people and all the way across America, Roll Call here in D.C., the Chicago Sun Times, the Buffalo News, the Chicago Tribune, The Christian Science Monitor, The New York Times, the Los Angeles Times, the Atlanta Constitution, the Bangor Daily News, the St. Louis Post Dispatch, the Commercial Appeal in Memphis, the Houston Chronicle, the Dallas Morning News and others have all written about scientific sampling and full funding for the Census.

They knew that when every American is not counted America loses, cities lose and people are denied valuable resources and representation in Congress, State Legislatures, County Boards and City Councils.

Secondly, I am supporting this amendment because it avoids the risk of a census shutdown and serious disruptions to census preparation. This amendment ensures that the Census Bureau has sufficient funding to carry out its plan.

This is a common sense amendment that allows the Census Bureau to move forward with their important work of making sure that we have the most accurate census possible. I urge my colleagues to support accuracy and support the Mollohan amendment.

Mr. ROGERS. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey (Mr. PAPPAS). Mr. PAPPAS asked and was given permission to revise and extend his remarks.

Mr. PAPPAS. Mr. Chairman, I rise today in support of the Constitution and our Founding Fathers' wisdom to support a "full enumeration" census and not a statistical sample that is bound to be flawed.

Mr. Chairman, the census is one of the most important activities our government undertakes each decade and we should take it very seriously.

The U.S. Constitution requires that a census be conducted every ten years in order to apportion the House of Representatives among
the 50 states. The entire configuration and redrawing of legislative districts from federal to state to local jurisdictions is based on the census and helps ensure the democratic principle of equal representation.

But despite the seriousness of the census, the American people have moved to ensure we have a failed census. Listen to the Government Accountability Office and even the Administration's own Commerce Department's Inspector General who have stated this sampling plan is "high risk."

Mr. Chairman, it is time to get serious about the census and follow the Constitution of the United States of America. I certainly have faith in our founding fathers belief in the importance of conducting an accurate census and we should as well. We should work for nothing less.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. HASTERT), the chief deputy whip of the House.

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

Mr. HASTERT. Mr. Chairman, I am convinced that we are at the crossroads at the decennial census. Either we will pursue a census with the goal of actual enumeration or we will allow the Clinton administration to gamble on a population polling scheme with the stated aim of not even trying to count everyone in the system.

I am sorry my good colleague from Illinois talks about bringing in racism in this thing. Not at all. What we really need to do is to look at this issue and make sure that every American is counted. We need to make an extraordinary effort to make sure that every American is counted. Every American should stand up and be counted in this country, not to be some statistic.

What really happens in actuality, you take 90 percent of the people, those people who turn in their forms, that do the things they were requested to do, and then if you have 95 percent of the people that turn this in, you throw away 5 percent. You uncount people. That is wrong. That is absolutely wrong. It should not be done.

Then they take a statistical guess at who makes up the rest of that 10 percent.

Mr. Chairman, as my colleagues know, what we need to do is what is right for the American people. We need to count the American people, we may need to make an extraordinary effort so that every American is counted, and that is in the cities and countryside and suburbs and everywhere, that we have a true representation of who the American people are, who that American is. That is, because it is tied to something else. It ties the representation of this House. And, if we guess who the American people are, then we guess who should be represented in this House of Representatives.

Mr. Chairman, that is not good enough for the American people.

We need to move forward, we need to not take the advice of Barbara Bryant, who was the person who headed the 1990 Census that some people say 5 million miscounted or 9 million miscounted. We need to go forward and count and do the job that cities like Milwaukee and Indianapolis and Cincinnati did do, and even the guess-timate of the 5 million people was wrong.

Mr. Chairman, we cannot afford to be wrong on the 2000 Census.

Mr. Chairman, as the Chairman of the House Subcommittee which formerly had jurisdiction over the Census Bureau, I rise in opposition to the Mollohan amendment. I am convinced we are at the crossroads in terms of the decennial Census. Either we will pursue a Census with the goal of actual enumeration; or we will allow the Clinton Administration to gamble on a population polling scheme with the stated aim of not even trying to count everyone.

I think it is important that the American people understand how the Clinton Administration is proposing to conduct our Census. Rather than trying to count every single one, the Census Bureau is proposing a complicated, and highly risky, population polling scheme. In essence, they propose to count 90 percent and guess the rest. Why do they favor such a risky scheme?

When asked, the Census Bureau claims "trust us" it will be more accurate and cost less. I beg to differ.

While I wholeheartedly support both these goals of saving taxpayer dollars and making the Census more efficient, I am convinced that polling is not the solution. In fact, the more I understand about the Administration's plan, the more I am convinced that polling will lead to a less accurate and ultimately more costly Census. Or, more likely, a failed Census.

We have a choice to make the Bureau's claim that polling will lead to a more accurate Census—the Post Enumeration Survey conducted during the 1990 Census. The results of this guesstimate suggested that 5 million persons were not "counted." The only problem is that these so-called "scientific" calculations were wrong. We know this because the computer software, 2,500 cases were misidentified. While 2,500 cases in a census of 250 million seems trivial, because of the use of sampling this mistake was magnified many times. In 1990, once the error was identified, the Census Bureau reduced its estimate of the undercount by a million persons. As the Las Vegas Review-Journal noted just last week, "garbage in, garbage out."

As disturbing as the potential for technical errors is—and the General Accounting Office noted that similar software problems persisted in 1990, I am particularly concerned about what will happen to Census forms turned in on time, by real people. Because of the use of statistical adjustment, real people will be deleted from the Census. Let me repeat—the Clinton Administration proposes to delete real people from the Census. Once again the 1990 Census poll illustrates this point. Had we used statistical adjustment for the 1990 Census, people in 9 counties in my home State of Illinois would have been deleted from the Census. Yes, Mr. Chairman, they would have been dropped from the census file. Some people have said they did not exist, even though they turned in their forms—this is wrong. But don't take my word for it, Howard Hogan, the Acting Chief of the Decennial Statistical Studies Division, admitted that nearly 1.5 million records would have been subtracted had adjustment been used.

To me, the Census is not just a process. It is a decennial portrait of the Nation. Every 10 years, each person has the affirmative right to be counted. What do we say to the person who lives in Elgin, IL, who says "I am a 24-year-old American of Irish descent, who lives in an apartment with my husband and 3-year-old son, and my form was deleted from the count?" I, for one, am not willing to tell her: "Don't worry. Although, we did not count you, we polled people like you and our odds of guessing your information correctly are quite good." I ask you, how can this be more accurate?

I have pointed to several problems I see with the Bureau's plan to supplant enumeration with polling. I also have pointed out that our experience with polling during the 1990 Census was not a good one. Although the Census Bureau assures us that we should not worry, that the problems of 1990 are in the past, the Administration remains unconvinced for a variety of reasons:

First, the Census Bureau has not solved many of the operational problems which plagued the 1990 sampling plan. During the 1990 Census, the Bureau plans to poll 750,000 households in less time than it took them to poll only ¼ of that number in 1990. And, given the strict deadlines that the Bureau faces to get the population numbers reported—at the same time Americans will be struggling with their tax forms—shouldn't we be concerned about quick fixes, mistakes, and how the adjustment models in order to get the results done? Do we really want this much power in the hands of a dozen people at the Census Bureau?

Further, a critical element of the population polling scheme, the Master Address File, is seriously flawed. The GAO pointed out that, for two test locations in 1995, the Master Address File did not include about six percent of the addresses identified through field verifications; and that some of the addresses belong to commercial buildings, not households. How can the Census Bureau conduct a random poll of all the households in America if it can't even identify where people live?

Finally Mr. Chairman, I am concerned about the potential for political manipulation in this plan. Although the Clinton Administration has assured us that politics will not be part of this census, I am not convinced. They have said "trust us" before, remember Citizenship USA. For instance, the decision to count only 90 percent of the population is itself an arbitrary figure that we cannot know how 90 percent is the magic number. What if they are not able to reach this goal? Does this mean that the Census will have failed? Not according to the Census Bureau. The dirty little secret of this plan is that the poll, not actual enumeration, is their first priority. In short, under the Census scheme proposed by this Administration, actually counting people is incidental to the final count—our population, and it's characteristics, will be determined by polling guesstimates. Why did the Census Bureau decide that they need to count 90 percent of our population? Mr. Chairman, it is my belief that this figure itself was chosen for political reasons—it was the smallest number they felt the Congress and the American people
could swallow. The plan to count 90 percent is a fig leaf, a subterfuge, a sham designed to cover-up their population polling scheme. Make no mistake about it, the final numbers will be determined by a poll and they will not be dependent in any way, shape, or form upon actual enumeration. Furthermore, if for any reason the Census is increased by those who want to cut off funding for the census in midyear. Earlier this year the GAO said the longer this disagreement between Congress and the administration continues, the greater the risk of a failed census.

The American people deserve an accurate count.

Mr. ROGERS. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. DELAY), the majority whip of the House.

Mr. DELAY. Mr. Chairman, I have to rise in opposition to this amendment, and the question today is quite simple to me: Do we decide to use polls to conduct the census, or do we actually count the people as required under the Constitution? Can we trust this President to do what is right?

Now this amendment makes it easier for this administration to use polls to conduct the census. As the President participated in this, I can have that brought over here:

Most people understand that a poll taken before an election is a statistical sample, and sometimes it’s wrong, but often, more often than not.

So, every time the Mollohan amendment supporters say “sampling,” have the word “poll” in mind, because, Mr. Chairman, this is taking polling to a very new level.

What is more? Should we poll to see if the Clinton campaign broke the law in the last election? Should we poll to see if Ken Starr is doing his job? Well, Mr. Chairman, the President is a master when it comes to manipulating the polls, but sometimes polls are not enough. Sometimes the American people need to know the truth. And when it comes to the census, the Constitution requires that we know the truth.

The most amazing thing about this polling scheme is that it will delete people. The White House would like to be members of a demographic group who are over-represented. Can my colleagues imagine that? Deleting real people? Do my colleagues think that the Founding Fathers ever imagined a census count that actually uncounted citizens of this country? That is what they are proposing: uncounting citizens of this Nation.

So, Mr. Chairman, we have to defeat this amendment and stop this polling madness. The Constitution requires a count of the people, not a poll of the people.

Mr. MOLLOHAN. Mr. Chairman, I yield ½ minutes to the distinguished gentleman from California (Ms. MILLER-MCDONALD).

Ms. MILLER-MCDONALD. Mr. Chairman, the opponents of a fair and accurate census have implied that both the GAO and the Commerce I.G. have said that the 2000 Census is headed toward failure because of the use of statistical methods. In fact, just the opposite is true. The Inspector General said in testimony before Congress:

I have fully supported and have been recommending sampling for some time. In fact, the Bureau needs to increase the amount of sampling over that presently planned.

Nye Stevens, who directs this issue at the GAO, also testified before a Republican controlled Congress and said:

We are particularly encouraged by the decision to adopt sampling among the non-response population. We have long advocated this step.

Both the GAO and the Commerce I.G. have endorsed the use of statistical methods in the census and have criticized the Census Bureau for not using them more.
August 5, 1998

CONGRESSIONAL RECORD – HOUSE

H7199

It is a bad thing to do. We just did it with the census and not the rest of the bill, which is horrible, and that is the reason the census is threatened, the very point the gentleman makes, that we are only funding the census for half a year, and that is why the 2000 Census is at risk. I thank the gentleman for making the point.

Mr. BECERRA. Mr. Chairman, in 1991 then Congressman NEWT GINGRICH, now Speaker NEWT GINGRICH, said: Use statistical sampling to adjust the count. The Constitution says, my State of Georgia is not going to have everyone counted.

1998, the Republicans under the gentleman from Georgia (Mr. GINGRICH) are trying to stop what he asked for in 1991. Why? Because there is such fright out there.

Now who are we going to trust? The National Academy of Sciences and the scientists, the experts, who do counting? Who? President Bush?

Then President Bush, said: “Please tell us how best to do this.”

He said: “Let us use statistical sampling.”

Or folks who said, “We want you to use statistical sampling,” when it benefited them but now are concerned about it?

I will tell my colleagues this: Who should the American people trust? I would trust those who are devoted and have devoted a career to science, not to people who are devoted to a career of politics. That is what we have today.

Mr. Chairman, I would hope that the American people could see through the charade and understand that there are some political risks that some folks are very concerned about, and, as a result, they are willing to play with the lives of American people who have never had a chance to participate in this process.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes and 10 seconds to the gentleman from Georgia (Mr. KINGSTON).

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

The Commerce, State and Justice bills have become part of the Clinton regain-credibility-by-shutting-down-the-government strategy.

We have a disagreement, or let us say Clinton has a disagreement. He wants to renege on last year’s promise and shut down the government using any excuse to do it. And what was last year’s bipartisan agreement? To maintain two tracks on the census:

Number one, the constitutional route. Remember that little rule book so carefully crafted by our Founding Fathers which many on this side and the administration consider a suggestion book, but the Constitution says, “You will count people head by head to make sure no one is left out and no one, wink wink, is put in who doesn’t exist.”

And then the Number Two: There is the polling method advocated by the President. The polling method is where we simply go out and sample some of the population, we fill in the blanks on whatever discretion or whatever numbers we need.

That is what this argument is about. Now the administration thinks we have politicized the Census Bureau, who has politicized the FBI, the BATF, the Immigration Service, the National Park Service, the Travel Service, the USDA and the EPA. Now they are doing the census service by bringing them in and asking where is this Census Bureau who is so worried about their budget, so worried about the census crisis, where are they?

Well, we have done a little investigation, Mr. Chairman, and here is where they are:

Number one, the itineraries for the executives and the head bureaucrats over at the Census Bureau, they have got a busy month coming up:

Rome, Italy, Trevoli Fountain, the Coliseum by moonlight. Paris, France, Champs Elysee by summer. Wiesbaden, Germany, I am getting ready for Octoberfest, beat the rush on the beer. Armenia. Well, everybody knows Armenians are experts in the census and then of course there is Malawi and Zomba, Malawi, which, as my colleagues know, I do not know exactly what they are, but I know they are real good at counting people and we need to go down there. And of course Rio de Janeiro, we can go down there in the summertime. And then Taiwan. Of course. Census crisis, go to Taiwan. Makes sense to me. Will not have problems with missile technology transfers with their neighbor.

The point is, if Clinton decides to shut down the government over this legislation, at least the Census Bureau will have enough frequent flyer points in the bank to keep running around the globe for another 3 months.

Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 4 minutes to the gentlewoman from Florida (Mrs. MEEK), who I am sure will speak to the issues in this debate.

(Mrs. MEEK of Florida asked and was given permission to revise and extend her remarks.)

Mrs. MEEK of Florida. Mr. Chairman, I just want to ask the Repubs one question: What is this? Some kind of a treatise on the Clinton administration?

What is it? An inquiry on the Clinton administration? Or is it a dissertation on the census? That is what we are here for. We are here to talk about the census.

And I want to tell my colleagues something. It is not funny to me. It is not funny because they have undercounted the people I represent, and they not only undercounted them, they did it in the last census and they are doing it again.

But it is funny to you. But it is not funny to me, because since the beginning of this country, you have grinned and scoffed at freedom for the people I represent.

There are a lot of things in this census that you are not even thinking about. The Voting Rights Act is in there. My people died for the right to vote. If you are going to skew the figures because you do not want to count them correctly, I am going to tell you where is the humor from this situation for me. For the past six censuses you have undercounted African-Americans. It is time to tell this country we want everybody counted.

I have been working on this census issue since the 104th Congress. Mr. CLINGER was the chairman of the committee at that time. I could not get a sentence to the front. Once we got a sentence to the front, we could not get a hearing. So it has been just a sequential means of gagging the Democrats about the census.

Now the time for this gag is over. You may as well cut it out, because we are going to let the American public know that you are taking the right that the Constitution gave us, enumeration. Define it for me. I have never seen it defined in the Constitution. Does it not say that if you count every head, that is enumeration. Enumeration could include sampling. You cannot prove to me through any kind of empirical observation that it means what you are saying it means.

Now you are telling me today that you know that there will be an inadequate count, you know there is going to be an undercount, yet you are taking the risk to say, my good friend the gentleman from Florida (Mr. MILLER), and we are good friends, but he discussed this morning that we are working on something to help this counting, this regular enumeration.

How are we going to do it? I offered an amendment to the Republicans. They hardly let me get in the door of the Committee on Rules, let alone let the amendment be declared eligible for the floor.

There is no way we are going to be able to use these people who work in the neighborhoods to help bring about an adequate count, even by their own best estimate, and that is using enumerators. I have not been able to get that through the census.

I want to say one more thing, and then I am going to yield, because I know the gentleman is frustrated. What you have been doing is saying we are going to throw a pile of money at the census just so we can utilize these people who work in the neighborhoods to help bring about an adequate count, even by their own best estimate, and that is using enumerators. I have not been able to get that through the census.

I want to say one more thing, and then I am going to yield, because I know the gentleman is frustrated. What you have been doing is saying we are going to throw a pile of money at the census just so we can utilize these people who work in the neighborhoods to help bring about an adequate count, even by their own best estimate, and that is using enumerators. I have not been able to get that through the census.

But I do not care how much money you put there, you are not going to be able to count them all. You have got to use some method to count them. But that is not why I am here. I am saying again, use the best method you can.

Mr. MILLER of Florida. Mr. Chairman, will the gentlewoman yield?

Mrs. MEEK of Florida. I yield to the gentleman from Florida.

Mr. MILLER of Florida. Mr. Chairman, I completely agree with the gentlewoman that we need to get people.
When I was on the floor earlier, I spoke about how we need to work together to get people in the local communities. In the Haitian community in Miami, we need to get Haitians. We will get legislation to give the government all the possibilities. That is exactly what we need to work together.

Mrs. MEEK of Florida. Mr. Chairman, reclaiming my time, I trust the gentleman, but I do not trust those other people helping you make these decisions, because if we do not use some people in the neighborhood, we will not get an accurate count. It is fruitless to try to count every person with that old traditional method. It did not work before, it is not going to work now. My appeal to you, to this Congress, is that it is impossible.

So I draw one conclusion, and I will sit down: There are some that do not want an adequate census.

Mr. ROGERS. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia, Mr. Davis, a member of the Subcommittee on Census. (Mr. DAVIS of Virginia asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Virginia. Mr. Chairman, I rise in opposition to the Mollohan amendment.

We have heard a great deal about the National Academy of Sciences and their endorsement of the population polling scheme for Census 2000. Let me let your honor a little secret: The distinguished members of the National Academy of Sciences have not endorsed the plan. Indeed, the entire membership of the National Academy never endorses anything.

So what then are these three blue ribbon panels at the National Academy? The NAS regularly convenes these panels to study important problems facing the country; but members of the committees need not be members of the National Academy of Sciences. Indeed, most of the time there are very few National Academy of Sciences members on the committee at all.

Let me give an example. One of the three panels endorsing the use of polling to adjust the census was called the Panel on Census Requirements for the Year 2000 and Beyond. There were 20 people working on that committee. How many actual members of the National Academy of Sciences? One. That is right, just one.

The other 19 members were handpicked so that the panel would know what the answer was before they even asked the question. We are dealing with a stack of deck. Chairman, I for one am not buying it.

After the panel finished its work and delivered the inevitable report, did the entire National Academy of Sciences address the report? Of course not. There are members of the National Academy of Sciences who oppose the projected polling scheme. There are other panels you can say the same kind of thing for.

The American Statistical Association created a handpicked blue ribbon panel to inform the public about sampling. While all the members of this panel may have been members of the American Statistical Association, again, the name was put before the panel. The answer the panel would have delivered was known ahead of time.

These phony panels are akin to asking Popeye if spinach should be the national vegetable. Do we ask the Seven Dwarfs to be objective about Snow White? Of course not.

Do not believe the hype. If you want objective scientific evidence for the reliability of the population polling scheme, then we have to reject it. The GAO has already expressed their doubts about this scheme.

There is too much at stake here. We think that this amendment should be defeated. During the dress rehearsal, the GAO discovered that the Master Address File did not include between 3 and 6 percent of the households. It is fatally flawed. Reject the Mollohan amendment.

Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Missouri. (Mr. GEPPERT of Missouri asked and was given permission to revise and extend his remarks.)

Mr. GEPPERT of Missouri. Mr. Chairman, there is a great saying by a great person. He said, "Those who cannot remember the past are condemned to repeat it." Republicans have failed to learn from our past experiences with the 1990 census, at the cost of leaving out millions of Americans in the year 2000 census.

We are here today debating the Mollohan amendment simply because our Republican colleagues have forgotten about what happened in 1990, when the census failed to count over 6 million people. They want to repeat that. They want another failed census.

The Mollohan amendment would require the Census Bureau to continue planning for the 2000 census until the Supreme Court makes the final determination that is constitutional. It is the only logical choice for Democrats and Republicans alike who want to see preparation and planning for the 2000 census proceed without political interruptions.

Let me add one further point. If we do not get an accurate census, it will have enormous economic implications for every community in this country. I have had both Republican and Democratic mayors tell me that this issue is the most important economic issue for their city, their town, their county, their village.

This is not just about politics, although, unfortunately, it has become that. It is about the economic future of every city, village and town in this country. Democratic and Republican alike want sampling, because they realize it is the only way we are going to get an accurate census.

Vote for the Mollohan amendment. Let us keep the promise of the Constitution. Let us get an accurate count. Let us do the right thing for the American people.

Mr. ROGERS. Mr. Chairman, I yield 1 minute to the gentleman from Florida. (Mr. MICA asked and was given permission to revise and extend his remarks.)

Mr. MICA. Mr. Chairman, this is not a complex issue. This is an issue about
the very basis of our representative form of government. You do not have to have a Harvard degree to understand what the Constitution says. Article I, Section 2, says the actual enumeration shall be made. The 14th Amendment says counting every whole number of persons in each State.

I defy anyone to come and show me where the Constitution, this is the Constitution, where it says we conduct polling, we conduct statistical sampling, we conduct statistical methods.

We do have 2 trillion and a half billion to conduct the census to determine our representative form of government and who comes here and represents the people, the very foundation of our democracy. The very least we can do is count each and every individual.

Two thousand years ago, citing Luke 2, Verses 1 through 7, in those days Caesar Augustus published a decree ordering a census of the world, and then they counted, 2000 years ago, every person on earth. At the very same for representative government.

Mr. MOLLOHAN. Mr. Chairman, we have come a long way in 2000 years.

Mr. Chairman, I am pleased to yield 1 minute to the distinguished gentlewoman from New York (Mrs. MALONEY) of New York. Mr. Chairman, I thank the gentleman for yielding time.

Mr. Chairman, earlier my colleague from Florida mentioned to the gentleman from Florida (Mr. MILLER), “I do not trust you.”

I would like to really respond to some of the statements that the gentleman from Florida (Mr. MILLER) has made on this floor and in the many meetings we have had in the Committee on Census. He has often referred to a book called “How to Lie about Statistics” written by Darrell Huff, and he uses this as an example in his arguments against the use of modern scientific methods.

Well, I decided not only to read the book, but to call the author. And, guess what? He supports modern scientific methods. I quote from Darrell Huff: “I do not think there is any controversy among professionals about the validity of sampling studies or statistical methods. They are universally used and in some cases they are the only methods possible.”

Mr. Chairman, I will put into the Record quotes from leading experts on statistics and quotes from editorial boards across the Nation, including Barbara Bryant, former Director of the Census Bureau.

Census Experts Support An Accurate Census Using Statistical Sampling


Dr. Barbara Bryant, Director of the Census Bureau under Former President Bush wrote in a letter to Speaker Gingrich, “[O]ur social and economic development as a nation will be served best by striving for the most accurate census possible. In every decade, that accuracy is increased by the best techniques for direct enumeration with the best known technology for sampling and estimating the unenumerated.” [Dr. Barbara Bryant of the University of Michigan Business School’s National Quality Research Center in a letter to Speaker Gingrich, 5/12/97]

The American Statistical Association stated, “It is unwise to prevent the use of ‘statistical sampling,’ which is a long established and fundamental component of statistical science—it is essential to obtain as accurate a measure as is possible using the best statistical tools available at the time of a census. The environment and methodologies are different in 2000 than 20 years ago, and they will be different again in the 21st century. We urge you to support using the latest scientific methods to assure that the Census Bureau uses the best current knowledge and science can provide.” [ASA letter, 5/13/97]

The General Accounting Office said it was “encouraged that the Census Bureau has decided to sample those households failing to respond to census questionnaires rather than conducting a 100-percent follow-up as it has in the past. When householders fail to respond to questionnaires produces substantial cost savings and should improve final data quality.” [Department of Commerce’s Inspector General, Frank DeGeorge, quoted in the “Census Bureau has adopted a number of innovative techniques to address the problems of past censuses—declining accuracy and rising costs. One innovation, which we fully support, is the use of statistical sampling for non-response follow-up.”]

The National Research Council concluded, “Change is not the enemy of an accurate and useful census; rather, not changing methods on which the U.S. Constitution is based would inevitably result in a seriously degraded census.” [The Panel to Evaluate Alternative Census Methodologies, “Preparing for the 2000 Census: Interim Report II,” June 1998]

The Population Association of America’s President, Douglas S. Massey, asserted, “The planned and tested statistical innovations [in the census] provide overwhelming support of members of the scientific community who have carefully reviewed and considered them. Their use is severely limited or prohibited, the 2000 Census is unlikely to work for 2000. If the court decides that sampling is illegal it is suspect and susceptible to manipulation. It’s important that the Census Bureau be allowed to conduct a representative sample of the population, especially in minority and poor communities. So the Census Bureau wants to make sure that all the people are counted, regardless of how the sampling issue is resolved. Full funding for the kind of census the administration has proposed—first a normative census, then the follow-up and other statistical techniques to determine how many people were missed and adjust the final figures accordingly. That’s the only way to combat the increasing undercount of lower-income people and minority groups especially that has skewed the census in recent years.

We’d bet that the Court will find that what the Framers meant by “actual enumeration” was “a real count” of the population—as opposed to guesswork or political logrolling—to determine distribution of Congressional seats and government benefits. But we could be wrong. If so, there won’t be sampling in 2000. If the court decides that sampling is illegal it is suspect and susceptible to manipulation. It’s important that the Census Bureau be allowed to conduct a representative sample of the population, especially in minority and poor communities. So the Census Bureau wants to make sure that all the people are counted, regardless of how the sampling issue is resolved. Full funding for the kind of census the administration has proposed—first a normative census, then the follow-up and other statistical techniques to determine how many people were missed and adjust the final figures accordingly. That’s the only way to combat the increasing undercount of lower-income people and minority groups especially that has skewed the census in recent years.

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than the one before it. In 1980, the census—the first one since 1940 to be less accurate—missed about 1.2 percent of the population. In 1990, it missed 1.8 percent. That would not be particularly alarming but for the fact that the count consistently missed certain groups, such as the undocumented, black and Hispanic, or aged. The census figures are misleading by a whopping 4.4 percent, for example. Republicans in Congress worry that actually counting those folks next time would result in the redrawing of congressional districts more likely to vote Democratic.

CONSTITUTION PROVIDES FOR INNOVATION

The National Science Foundation and a host of census experts have recommended the use of sophisticated statistical sampling methods to complement actual enumeration in order to achieve a more accurate count, and the administration plans to do that.

Republicans have raised the spurious claim that the Constitution requires actual enumeration only in the first census, however. It states: "The actual enumeration shall be made within three years after the first meeting of the Congress of the United States..." But the argument really is more about politics than the facts. It's the question that remains after the courtroom wrangling the other day between lawyers for House Speaker Newt Gingrich and those representing cities like Buffalo that have significant numbers of minorities and poor people.

Because the opposition has been so overstated, the average American could be forgiven for assuming that the Census Bureau intends to go out and use a few strategic samples in lieu of a count, much like public opinion or TV rating pollsters. That is far from truth.

The technical dispute is over the "enumeration" called for in the U.S. Constitution. Republicans argue that means there must be an actual head count and no sampling.

The Census Bureau, cities and minority groups, arguing the other side point to accompanying language saying the census shall be conducted "in such manner" as Congress directs. Logic dictates that the framers of the Constitution intended to go out and use a few strategic samples in lieu of a count, much like public opinion or TV rating pollsters. That is far from truth.

Census forms will still be mailed out—short and long versions of five forms each, to try, and reach those who do not respond. But because experience shows that it is impossible to contact everyone (and expensive to try), the census workers will aim to reach a minimum of 90 percent of all households in each census tract. The difference will be imputed on the basis of the data of those who...
were reached in follow-up visits. In addition, a sample of 750,000 households nationwide will be made as a safety check on the calculations. Sampling is not weird science; many experts in the field favor the method. It also has ample precedent. As it is, the Census Bureau takes 200 sample surveys each year. Some sampling in the past with a major census was done long ago as 1940. As a panel from the National Research Council observed, "It is fruitless to continue trying to count every last person with traditional census methods of physical enumeration." Census day 2000 is April 1. The nation will be invited to complete the one-person Census and the one-page Census workbook. The Census Bureau estimates that a ban on sampling would make for the most accurate count.

[From the Chicago Tribune, June 6, 1998]

THE WISDOM OF CENSUS SAMPLING

Trying to count every one of the 260 million-plus people who reside in the United States is a literally impossible task. No matter how much time, money and effort the Census Bureau expends, it can never hope to get a perfectly accurate count. In the 1990 effort, the bureau concluded, it missed some 8.4 million people altogether, and 4 million people not once but twice. And relying on old techniques, the count is getting steadily less accurate.

That's of some importance, since congressional seats and federal money are divided up by population, but it is a deeply divisive issue in Washington. The Clinton administration and its allies in Congress, along with the National Academy of Sciences and the great majority of experts in the field, favor a census Bureau plan for statistical methods known as "sampling" to estimate the millions of people who escape the old-fashioned head count. Republicans, fearful that most of these people are black or Hispanic, or tend to vote Democratic, are resisting that suggestion. They have filed a lawsuit challenging the method on constitutional grounds and, if they lost in court, they hope to block it with legislation.

The president raised the volume on the issue last week with a speech in Houston—where, he said, the last census missed some 67,000 people. He added that leaders last fall would cut the number of people which are missed by the census to just 300,000. It would also save money.

Republicans claim the use of this method would violate the Constitution, which calls for "actual enumeration" of the population. But they say, "The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct."—which suggests that legislators have considerable latitude.

Nor is it obvious that "actual enumeration" means individually counting every person, particularly when that is known to be a seriously inadequate measure. George Bush's Justice Department issued an opinion that sampling is constitutional. A federal court is expected to issue a decision on these questions next month.

But Republicans have not made the case that a ban would make for the most accurate count possible. However inconvenient its political consequences for some, that goal has to take priority over everything else.

[From the Christian Science Monitor, April 28, 1998]

DOWN FOR THE COUNT?

Every census of a vast country like the United States is an estimate. Millions don't respond to the mailed census forms, and every front door can't be visited by follow-up head counters, particularly in tightly packed urban areas.

The count came up so short in 1990 (at least 10 million) that the Census Bureau devised a plan for using sampling methods to arrive at a more accurate estimate next time around. Although it is not on the list of most universally accepted statistical tools but Republicans in Congress have dug their heels in—no sampling!

Why? Sampling's critics may say it's because the Constitution specifies an "actual enumeration." But the Constitution also says that the counting shall be done "in such manner as the Congress shall direct." There's nothing barring techniques like sampling. The real issue here is political, not constitutional. Some in the GOP really want more accurate census totals if the hardest-to-find Americans, the poor and new immigrants who typically vote Democratic. Larger numbers in those categories could affect the political character of congressional districts allotted to states after 2000, when the new census becomes the basis for reapportionment.

But the effects of an undercount go beyond representation. They can slow the distribution of ravage assistance programs, since localities partake according to their populations. Beyond governmental concerns, businesses assessing markets and researchers analyzing society rely on census numbers.

After 1990, the calls for improvement were loud. The bureau was all but forced to go back to the drawing board in June 1991 by the Census Bureau are a far cry from "guessing," as some charge. The counting process would begin with the traditional mailed census forms. Successive questions, no. 1, then no. 2, and so on. People would be picked from a master address list for the country. In 1990, about 65 percent of households responded. Follow-up interviewers will contact a large number of respondents, with an emphasis on areas with high rates of non-response. The bureau hopes this will boost the total contacted to 90 percent.

But that leaves 10 percent uncounted, and now the going gets tougher. This is where sampling would have its biggest impact. A sample, not a full count, would be used to produce national estimates which could be used to correct the earlier head count. "Estimation factors" would emerge that could be used to correct counts in all blocks, with a close eye to corresponding age, race, and home ownership, race, and age of residents.

This spring, the bureau will conduct some dress rehearsals of this system in geographically varied parts of the country. Congress allowed for that much. But a full-scale gearing up for 2000 remains problematic.

Preparations for the national census have underscored another problem facing the Census: It's difficult to find workers to conduct the count. With today's very low unemployment, finding well-paid, no-benefits census jobs. This problem will be exacerbated if Congress orders a labor-intensive, no-sampling national head count.

Meanwhile, Ms. Riche has been a sensible proponent of this plan.

Riche bluntly says there is probably no one in the Republican leadership that will approve a sampling plan. As the de facto acting director or the Census Bureau without a guiding force when the sampling battle resumes in Congress after this testing period. It appears unlikely that the Republicans will approve a nominee to the post who supports sampling. Yet Ms. Riche bluntly says there is probably no one in the professional community who thinks an accurate census can be taken without sampling. The Administration may decide to shy away from a confirmation battle by naming someone from the Census Bureau itself instead. The politics that drives this debate now threatens to undermine what should be a politically neutral government task.

[From the Los Angeles Times, Oct. 2, 1997]

IF THE CENSUS IS FAULTY, THE CITIES WILL PAY DEARLY—GOP OPPOSITION TO SAMPLING COULD HIT CITIES HARD

When a congressional conference committee takes up the debate in coming days over how to conduct the 2000 census, the Senate version of the bill should prevail. That version would sensibly allow the Census Bureau to use scientifically sound sampling methods to augment the direct count, thus
avoiding an undercount like the 1990 fiasco that probably cost California a couple of seats in the House of Representatives and up to $1 billion in federal population-based funding.

If conference action fails to eliminate the House ban on funding for statistical sampling, President Clinton needs to make good on his vow to override the appropriation bill if it contains language that funds the Commerce, State and Justice departments, a measure to which the House attached its sampling ban. House Republicans are set to adjourn in a similar stand-off later this year. Are they prepared to do that again?

The Constitution requires a decennial census. To this head count, which is nearly as old as this nation, is becoming increasingly inaccurate because of the changing face of America. The growth of hard-to-count populations such as immigrants, the urban poor, and, in some areas, the rural poor frustrates an accurate tally where individuals are physically counted. The 1990 census missed 834,000 residents of California, according to a census study completed after the official count. That costly failure also denied many Californians the fundamental right to equal representation. That's unjust.

The House GOP leadership opposes sampling, which is commonly used in public opinion polling, on the grounds that it falls short in terms of accuracy, constitutionality and safeguarding against political manipulation. In taking that position, the GOP disregards the scholarly approval of the National Academy of Sciences.

Republicans call for a physical head count, which tends to favor affluent, married suburbanites—the traditional Republican voter base—over the poor, minorities, single people and transients who dominate many cities. Although the Justice Department in the last three administrations has interpreted the Constitution as allowing sampling, GOP leaders insist that the document specifies an actual enumeration and they refuse to proceed without a constitutional test in the Supreme Court.

On this issue, the Republicans aren't constitutional puritans, they're partisans. The only heads they are counting are those in the GOP column. Ultimately this debate is not about population figures, it's about politics. If all Americans are counted, according to some enthusiasts, additional congressional districts will be required in areas dominated by minorities and the poor, who traditionally vote Democratic. Changes in political geography would cost the Republicans a dozen seats—and perhaps its majority in the House—some analysts say. Those are the numbers that fuel this partisan controversy.

If the Republican majority succeeds in forcing the Census Bureau to rely on outdated methods, the GOP will probably save several seats. But that victory would be achieved at the expense of a large demographic group, especially in California. The California congressional delegation, Democrats and Republicans alike, should support the census takers, recognize the damage done by procedures of the past, and try to ensure that the Census Bureau can be relied on to provide accurate information that will serve the nation while safeguarding against political manipulation.

The Census Bureau is preparing for the next census. Some of the issues raised in the past—such as the role of sampling techniques and the accuracy of official counts—will be addressed. But the Census Bureau must also consider how to address new challenges, such as the growing use of technology in data collection. The bureau must also be mindful of the need to protect the confidentiality of individual data.

The Census Bureau has a long history of working to improve the accuracy of its population counts. In the past, the bureau has used a variety of methods to count people, including door-to-door enumeration, mail surveys, and electronic data collection. The bureau has also developed new technologies, such as real-time data collection, to improve the accuracy of its counts.

The Census Bureau is also working to improve the accuracy of its population counts by improving the way it collects data. The bureau has been working to improve the accuracy of its data collection methods, including by using more accurate and reliable data sources, and by using more advanced statistical techniques to improve the accuracy of its estimates.

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CONGRESSIONAL RECORD — HOUSE

August 5, 1998

2000 AND COUNTING

To many Americans, one of the most puzzling things about the Beltway brawl last month over disaster relief was the insistence by Rep. Christopher Shays of Connecticut that higher- than-expected North Dakota be tied to Census 2000. The census? That boring decennial national head count? That mundane, constitutional requirement that somehow, man, woman and child? What's the big deal and what’s the problem?

Well, the big deal is the census is a very big deal. And the other reason than it determines how many members of Congress, and thus how much clout, each state gets. The problem is that the 1990 census, while respected overall, revealed continuing and unacceptable trend: certain groups, rural Americans and blacks especially, are habitation undervalued and the gap is growing.

And, the census is getting extraordinary expensive. The last one cost $2.6 billion, with much of that going to conduct house-to-house follow-ups on the 35 percent of Americans who did not mail back their initial forms. The Census Bureau estimates Census 2000, if done with 1990 techniques and if it attempted to find every household, could run as high as $4.8 billion.

Congressional leadership has made it clear there is no way they’ll spend that much, yet, paradoxically, leadership also is steadfastly opposed to a proposal the Census Bureau has to save as much as $1 billion by augmenting the follow-up with sampling and statistical analysis.

With overblown rhetoric that would cause most folks to blush, opponents call the plan, which has the endorsement of the esteemed National Academy of Sciences, a “risky scheme of statistical guessing.” This from the same politicians who use sampling and statistical analysis to gauge the public’s mood before every election, who use these proven and finely honed techniques to declare victory five minutes after the polls close.

Unconstitutional, they say. That sacred document requires an actual enumeration. Yes, it does, but if the Constitution were followed, officials could burn the guns off the shelf and any Mormon male with enough hair on his chest could have 16 wives. Were they to speak today, the Founders might say they had no idea the country would get so big, the population so mobile and so suspicious of government. Just get it most accurately possible.

The most undercounted segment of the population is black America and, as the recent revisitation of the abominable Tuskegee Syphilis Study reminded us, blacks have just cause to be wary when someone from the government comes knocking on the door to ask a lot of personal questions. Reluctance to count them better raises the specter the GOP doesn’t need and the nation can’t abide.

GOP leadership says the main reasons they’re against sampling is that the census is used to determine everything from congressional districts and the distribution of federal money to the makeup of state legislatures and local school boards, so the Clinton administration can find a way to manipulate the numbers to its advantage.

Certainly, this administration is no stranger to the concept of manipulation, but the chief handicap to taking this approach is the Party of Watergate, the mother of all manipulations. A bipartisan approach to funding the census and a nonpartisan approach tooversampling is critical.

But logic is exactly what’s missing here. Rep. Christopher Shays of Connecticut is one Republican who’s appalled at his leadership’s stubbornness and shortsightedness. “It’s embarrassing to have my party opposed, supposedly on scientific grounds, to something that the president says all the other day. ‘Politically, it’s a mistake. The big gainers from a better 1990 census would have been the West and the South— definitely not the Democratic strongholds. Leadership is dead wrong on this.”

Dead wrong, but there’s time to get right. The Census Bureau’s stage count is critical rehash of the techniques in a few selected regions next year. Congress should give the trial run a fair hearing and then decide either to go with a head count that is accurate and affordable or to stick with the exorbitant and flawed. As it stands, Census 2000 is a disaster waiting to happen.

[From the St. Louis Post-Dispatch, July 19, 1997]

GOVERNMENT REFORM AND OVERSIGHT

The battle over the 2000 census is heating up again in Congress. Republicans insist on an actual count of each and every American—something that has long proved to be impossible. The Census Bureau wants to use statistical sampling for the last 10 percent of the population that’s hard to find and routinely missed. The bureau is right.

But this week, the House Government Reform and Oversight Committee issued a statement attacking statistical sampling, while a House Appropriations subcommittee in funding the bureau’s normal operations for next year prohibited any of the money being used for statistical sampling. This is just plain bad faith. Earlier this year, President Bill Clinton to accept a ban on statistical sampling by including it in a disaster relief bill. Mr. Clinton parried and forced them to drop it. In retrospect, the president’s statement attacking statistical sampling, which has the endorsement of the esteemed bureau plans to use statistical samples, a method never before used but one Census officials believe promis ed to report in 30 days the details of just how statistical sampling would work. That deadline hasn’t yet arrived, but Republicans are going ahead with their prohibitory anyway, making the matter a clearly partisan issue, which it is, of course, since Democrats might benefit by statistical sampling while Republicans would lose.

So Republicans don’t care about the facts. But they do care about losing congressional seats if data are missed mainly minorities and children are fully counted. There’s no question that an actual body count will miss some of them, as it did in 1990, when 4.7 million people or 1.8 percent of the population was counted, including 67,000 Missourians and 162,000 Illinoisans. Some 5 percent each were Hispanics, African-Americans and Indians.

Statistical sampling, widely used by pollsters, marketers and sociologists, can overcome this problem. Several committees of the National Academy of Science have endorsed it, and the bureau is eager to use it. It may be reasonable for Congress to wait for a detailed explanation of how statistical sampling will be applied. It is unreasonable to rush to judgment now. An accurate count is too important to be jeopardized by partisan politics.

[From the Houston Chronicle, June 23, 1997]

ACCURACY A MUST—MUCH RIDING ON CORRECT CENSUS COUNT FOR HOUSTON

In Congress, even the method for counting the American people is regrettable politicized. With the 2000 Census approaching, Republicans and Democrats are at odds, imagining that, over what method the Census Bureau should use to count the nation’s population.

Republicans want to physically count each and every one, while Democrats argue in favor of using statistical sampling, a method never before used but one Census officials believe will yield a more accurate count. In recent years, the Census Bureau has famously undercounted the population, particularly in Texas. In the 1990 count, more than 4 million people in the country an estimated 500,000 in Texas were missed.

Undercounting the population is not consequential. Texas and other states where undercounts were greatest lost out on additional funding. House seats are and billions of federal dollars ranging from Medicaid to highway construction funds. State officials believe their states miss Census cost Texas roughly $600 million in federal money. That is funding that, in fairness, the state of Texas cannot afford to concede again.

The Census has been particularly inept at counting inner-city minorities and the poor. An estimated 5 percent of all Hispanics and blacks were not counted in 1990 in Houston, where Hispanics and blacks account for more than half of the population, that’s a major problem.

Republicans argue that the Constitution mandates that every American be physically counted. However, doing so is a practical impossibility. As well, maintaining the status quo with the traditional count contradicts the GOP’s movement to make government more accountable.
Understandably, House Republicans are being dutifully protectionist about their slight seat margin, one that they feel will be threatened by more minorities being counted.

But Texas Republicans should know better than most the stakes riding on an accurate count. Houston has a great deal at stake with the next Congress funding bill, which is why the Census Bureau will use statistical sampling. The problem is that census-takers seem to be undercounting blacks.

Capitol Hill Republicans aren't fazed. They fear that changing the status quo could undermine them and help the Democrats— with the new distribution of funding bill, the larger piece of legislation in which the sampling proposal is hidden, did not come up for a vote before Congress adjourned for the Memorial Day break.

To be sure, The Dallas Morning News has in the past registered its concern over "cen-sus accuracy." The problem is that the nation was less than 1 percent, for minorities, in the year 2000. The purpose of the U.S. census is to get the most accurate count possible. If using modern statistical sampling to augment the actual head count makes the census more accurate, who could reasonably object?

No one, but then politicians afraid of losing power do not always act reasonably. Thomas Jefferson conducted the first U.S. census in 1790, and census takers have known that there are discrepancies between the actual number of residents and the number counted in the census. Some people are not counted, and some are counted twice.

Statistical sampling is nothing more than counting some neighborhoods twice to measure accuracy. It's not a guesstimate that can be made by any advisor. It serves the same useful purpose as an audit of financial records to make sure the numbers are correct.

In his visit to Houston Tuesday, President Clinton was right to say that the issue transcends partisan politics: "We should all want the most accurate method.

However, some Republicans believe, without much evidence or logic, that a more accurate count would significantly favor Democrats by counting urban residents that have been missed in the past. Congressional Republicans therefore oppose using statistical sampling to make the count more accurate.

They have little to fear from census accuracy. Only a couple of states might lose one congressional seat each, and the number of residents who show up at the polls and vote Democratic will not change no matter how many residents are counted.

An accurate census serves all Americans and helps determine our future. True, states and federal funding formulas would be significantly affected, but wouldn't the nation be better off if government spending were based upon the number of tax-paying, grossly inaccurate population numbers?

Politicians who argue for keeping the census inaccurate place themselves in an untenable position. In another context they would insist the sailors compute their approximate position with a sextant and reject satellite technology accurate to a few yards.

CENSUS—CONGRESS NEEDS TO FUND NEW SAMPLING APPROACHES

Ah, spring, and the census taker's fancy turns to... statistical sampling methodologies conducive to enhanced accuracy in the decennial enumeration. How exciting.

But hold on there. Knowing the actual population of the United States is very important indeed. Census figures serve as a basis for the allocation of congressional seats and the lines for congressional and state legislative districts. In a democratic republic, how much more important can things get? Not much.

Yet civil service professionals at the Census Bureau are warning that unless Congress extends the necessary funding to upgrade the government's demographic techniques, the 2000 census could be the least accurate to date. Inner cities and rural areas will be particularly susceptible to a worsening undercount.

The problem is that census-takers seem to be undercounting blacks.

As we said, the census is a complex and gargantuan undertaking. It is not a guesstimate that can be made by any advisor. The nation's statistician says that the purpose of the U.S. census is to get the most accurate count possible. If using modern statistical sampling to augment the actual head count makes the census more accurate, who could reasonably object?

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Politicians who argue for keeping the census inaccurate place themselves in an untenable position. In another context they would insist the sailors compute their approximate position with a sextant and reject satellite technology accurate to a few yards.
How can we be sure we are right when we are not counting people? What statistics reveal is very interesting, but what they conceal is vital. A central problem with polling is the political temptation, which we have seen a lot of in deciding just the results. Political objectives can shape the assumptions that must be made to frame any formula for making final rulings. That is why we are opposed to it.

Michael Barone, the author of the “Almanac of American Politics,” says, “This is a White House that had no scruples about getting the INS to drop criminal checks on applicants for citizenship so that more Democrats could vote, they are individuals who deserve to see the knock of enumerators. Although they are not registered to vote, they are individuals who deserve to be counted, to be recognized, and to be represented in public life. It is this last consideration that has caused a flap in Washington. If a significant portion of the undercount is restored, a number of congressional districts—perhaps as many as two dozen—will be redrawn in a way that is likely to benefit Democrats.

Republicans, led by Senate majority leader Trent Lott and House Speaker Newt Gingrich, have accused Census director Kenneth Farnsworth Riche to abandon the proposed sampling, but she has responded that it is the best hope for an accurate count. Congress will not and should not pay for a massive personal enumeration that would track down every last individual.

House Republicans may move this week to attach a prohibition against this technique to a supplementary appropriation for disaster relief. The Senate backed off a similar attachment, and the House should do the same.

The goal should be clear: the most accurate account possible, without exercising made-up estimates that would help Democrats and without an acknowledged undercount that helps Republicans. The country needs an accurate count of its residents regardless of political considerations.

Mr. ROGERS. Mr. Chairman, I yield 5 minutes to the gentleman from Louisiana (Mr. LIVINGSTON), the very able and distinguished chairman of the full Committee on Appropriations.

Mr. LIVINGSTON asked and was given permission to revise and extend his remarks.

Mr. LIVINGSTON. Mr. Chairman, hearing some of these speeches from the Democrat side, I have to believe that I am in George Orwell’s “Animal Farm,” where everyone is doubting everything. A real count equals polling estimates. Yet, the words “enumeration” and “actual head counting” means under-counting. Up is down, down is up. Non-sense reigns. If they counted by head 2,000 years ago, we have come a long way, baby. We can estimate how many people are out there in the world.

Mr. Chairman, 200 years ago they were a little behind the times, too. They used the word ‘enumeration,’ ‘actual head counting’ to determine congressional seats and shape the districts for elected officials, both in Congress and all around the country in local offices, State legislatures and local school boards.

They knew what they were talking about. They knew they had to go around and count people. But that is passe, because we are above that. According to the arguments by the majority, the Administration’s polling plan for the 1990 Census is fine. It would cost 90 percent of the population, and estimate, estimate by polling, the remaining population. We can be sure we are right.

Kenneth Blackwell, the cochairman of the U.S. Census Monitoring Board, Treasurer for the State of Ohio, argues that a better way than polling to reduce the undercount is to use administrative forms to fill in the gaps. Forms filed with the government agencies that administer public programs are available with up-to-date information.

For example, children under 18 represent 52 percent of the undercount in 1990. Yet, as of 1996, Medicaid had records on 18.3 million people 20 years old and under. If neither struggling to make ends meet might not have time to fill out her Census form, but would certainly take the time to fill out Medicaid forms. We do not need polling, we need to count people.

Mr. MOLLOHAN. Mr. Chairman, I am very pleased to yield 2 minutes to the very distinguished gentleman from Ohio (Mr. SAWYER) to speak to this horse and buggy versus modern transportation debate that we have going on here today.

Mr. SAWYER. Mr. Chairman, let me clarify. Within just this past week, the GAO has testified before the Senate Governmental Affairs Committee that the Census Bureau’s plan will improve the accuracy of census counts for the Nation, for States, for counties, for cities, and even census tracts, which are the basic building blocks of our democracy. They come to that conclusion because they know this has nothing to do with a poll.

The plan is very different from a poll. The Census Bureau will be making an unprecedented effort to contact virtually every household in the United States to fill out and return the Census questionnaire, and everyone who responds in all of the different ways, the unprecedented number of ways, will be counted. They will not be thrown out. Beyond that, then, finally, sampling and statistical techniques would be used to supplement that effort in two ways. First is in following up on those households that do not respond, and sending people to them. Then, sampling will also be used to help check on those who might still have been missed or miscounted, even with those new procedures.

If polls were taken in this way, with a major effort to contact everyone in the country, followed by a very large sample to account for those who did not respond, followed by another large quality check, the results would be vastly more accurate, not only than any poll, but certainly than the 1990 Census.

None of this bears any resemblance to the way public opinion polls are taken. That is why the American Statistical Association has been so adamant in their finding that estimation based on statistical sampling, the use of these techniques to improve counts, is needed and widely used, and agreed on this method. The President of that organization wrote that “The general attacks on sampling that the Census debate has...
Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from New Jersey (Mr. PASCRELL), who has worked so hard on this issue.

Mr. PASCRELL. Mr. Chairman, I have heard pretty horrible things on this floor, but I just heard the worst that I have ever heard. To say that someone has the time to fill out a Medicaid form but does not have the time to fill out the census questionnaire misses the whole point. What if you never got a questionnaire in the first place? Oh, there is the rub.

I have heard on this floor a tremendous amount of discussion with lilies and anchors in reality. I have been in two censuses. The enumerators worked very hard to find those people who either, one, did not fill out their questionnaire; or two, never got one in the first place. But in order to get to those people, you have to know where they live. You have to have a housing unit on your form.

The secret, by both Democrats and Republicans, and past administrations have admitted this, the secret to getting accurate census is to have accurate addresses. In a five-family house, if we have 22 mailboxes, that should give us a clue that we are not going to be able to do this by questionnaire alone. They missed the whole point, and they do it deliberately. They do it deliberately.

This is serious business we are talking about. We cannot call someone who has admitted this, the secret to getting an accurate census is to have accurate addresses. In a five-family house, if we have 22 mailboxes, that should give us a clue that we are not going to be able to do this by questionnaire alone. They missed the whole point, and they do it deliberately. They do it deliberately.

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Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 2 minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, cities and counties cannot afford an undercount in the next Census. I know that from personal experience. Before coming here 3 years ago, I served on the Board of Supervisors for Santa Clara County for 14 years. We worked hard during times of declining county revenues to maintain vital services like health care for poor children.

Every city and county needs an accurate Census that counts everybody in order to serve everybody, because each year Census data determines $180 billion in Federal funds. Some people here have determined that money that goes into schools, transit systems, senior citizens' centers, and health care facilities.

People do not disappear when they are not counted. When there is an undercount in the State of California and local taxpayers end up paying for Federal programs. That is why lawsuits were filed in California after the 1990 Census by both Democratic and Republican local officials, because an inaccurate census is not fair to local taxpayers.

In 1990, the undercount in the State of California was estimated to be over 834,000 people. After the last Census we put our thinking caps on. The scientists came together and they came up with a scientific recommendation for a scientific count.

I have heard a lot of discussion here today, but I think the American people are going to be able to figure out what is going on. Some people here have determined that the people found through scientific methods might vote for Democrats. I do not know whether they will or not, but out in the real world, real local government officials of both parties want an accurate count that the scientists can provide us, so we can be fair to local taxpayers. I urge support of the Mollohan amendment for that reason.

Mr. ROGERS. Mr. Chairman, I yield 24 minutes to the very able gentleman from Ohio (Mr. TRAFICANT). (Mr. TRAFICANT asked and was given permission to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Chairman, there is no one I respect more in the House than the gentleman from West Virginia (Mr. ALAN MOLLOHAN). He is one of our great Members. I disagree with him.

This debate is about the Constitution. If the Congress of the United States wants to conduct the Census by sampling, sampling, the Congress of the United States should be able to pass a two-thirds amendment vote to the United States Constitution.

I chose to come to the floor for several reasons. Number one, I am hearing all these plaudits about scientists. If the Founders thought so much of science, why do we have scientists, not citizen politicians. People should start being proud of being a politician. We do the work of the people in America.
It has been estimated that the 1990 census undercounted my home town of Houston by 67,000 people. It is unfair that these people were not counted. The State of Texas lost a billion dollars in Federal funds because of the undercount. The 1990 census in title I funding, road construction, senior citizen services. The undercount was so severe that President Clinton actually came in June to the district that I am honored to represent to highlight the needs of an accurate census count. Dr. Mary Kendrick, Director of the City of Houston Health Department, said at that meeting that accurate census count data is critical to public health. She noted that the census data on child poverty helps determine nutrition and children's nutrition health programs.

Many people are not easily counted, whether they are in an urban area like mine because sometimes they fear the government. If the 1970 census was conducted in a rural area like Montana they may not want to send back that form that the government sent, they may not want to answer that door when that enumerator comes by and knocks on that door. But they still deserve to be counted, even if they do not want to be. That is why this assessment is so important.

The Houston Chronicle, on two separate occasions, reported on the need for a fair and accurate census in their editorial. The June 23 editorial said, "But Texas Republicans should know better than half of the population, that's a major problem. Republicans argue that the Constitution mandates that every American be physically counted once every ten years. That's a practical impossibility. As well, maintaining the status quo with the traditional count contradicts the GOP's movement to make government more accountable.

Understanding, House Republicans are being dutifully protectionist about their slight seat margin, one that they feel will be threatened by more minorities being counted.

But Texas Republicans should know better than half of the population. The 1990 Census is the most accurate census count. Houston has a great deal at stake with the accuracy of the next Census."

Mr. Chairman, I include for the Record the following editorials:

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ACCURACY A MUST—MUCH RIDING ON CORRECT CENSUS COUNT FOR HOUSTON

In Congress, even the method for counting the American people is regrettable politicized. Even the approach dollars Republicans and Democrats are at odds, imagine that, over what method the Census Bureau should use to count the nation's population.

Republicans want to physically count each and every one, while the Democrats favor using statistical sampling a method never before used but one Census officials believe will yield a more accurate count.

For years the Census Bureau has inad- 

mously undercounted the population, par- 

icularly in urban areas. In the 1990 count, more than 6 million people in the country—approximately 6 million people were counted. However, doing so is a practical im- 

possibility. As well, maintaining the status quo with the traditional count contradicts the GOP's movement to make government more accountable.

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[From the Houston Chronicle, June 4, 1998]

COUNTING HEADS—NO REASON TO KEEP U.S. CENSUS INACCURATE

The purpose of the U.S. census is to get the most accurate count possible. If using modern statistical sampling to augment the actual head count, would yield a more accurate, who could reasonably object?

No one, but then politicians afraid of losing power do not always act reasonably. Recently Thomas Hargrove directed the first U.S. census in 1970, census takers have known that there are discrepancies between the actual number of residents and the number counted in the census. Some people are not counted; some are counted twice.

Statistical sampling is nothing more than counting some neighborhoods twice to measure the accuracy rate that can be manipulated for partisan advantage. It serves the same useful purpose as an audit of financial records to make sure the numbers are correct.

In his visit to Houston Tuesday, President Clinton was right to say that the issue transcends partisan politics: "We should all want the most accurate method."

However, some Republicans believe, without much evidence or logic, that a more accurate count would significantly favor Democrats by counting urban residents that have been missed in the past. Congressional Republicans therefore oppose using statistical sampling to make the count more accurate.

They have little to fear from census accuracy. Only a couple of states might lose one congressional and the Commonwealth of Pennsylvania and some who show up at the polls and vote Democratic will not increase no matter how many residents are counted.

An accurate census serves all Americans and harms no political party. True, state and federal funding formulas would be significantly affected, but wouldn't the nation be better off if government spending were based upon accurate rather than grossly inaccurate population numbers?

Politicians who argue for keeping the census inaccurate place themselves in an untenable position. In another context they would insist that sailors compute their approximate position with a sextant and reject satellite technology that is within a few yards.

Mr. MOLLOHAN. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Illinois (Mr. BLAGOJEVICH).

Mr. BLAGOJEVICH. Mr. Chairman, the 1990 census was the first U.S. census to be less accurate than the one before it. Approximately 6 million people were not counted in the 1990 census. In the City of Chicago, 68,000 people were missed. That is enough people to fill every seat at Soldier Field in Chicago. Those empty seats in our census cost Chicago hundreds of millions of dollars in Federal assistance. It costs your community millions of dollars, too. This kind of undercount is the fault of the administrations, the National Academy of Sciences and the General Accounting Office, all looked at the problem of undercounts and determined that using modern statistical methods would help eliminate these mistakes in the future and avoid the kind of undercounts that resulted by using the old model.

The reasonable approach is to use the same methods that we use when we compute agricultural production, crime statistics, unemployment figures, as well as countless other government statistics.

Let us use common sense. Support the Mollohan amendment which does not place restrictions on its ability to provide a fair and accurate count.

Mr. MOLLOHAN. Mr. Chairman, I thank the gentleman from Kentucky for yielding me the time to stand with the majority that support the Mollohan amendment. And then I would like to convey to all of us words: "I respectfully request that the census numbers for the State of Georgia be corrected to reflect the true population of the State so as to include the over 300,000 which were not previously included. Without the adjustment, minority voting strength in Georgia will be seriously diluted. Based on available information, without an adjustment to compensate for the undercount, minorities in Georgia could lose two State Senate seats and 4 to 5 House seats. As a result of conversations with black legislators, it is my understanding that they have not only concurred with this request but stated that they believe it is required under the Voting Rights Act."


Let us get away from Republican politics. Vote for statistical methods and the Mollohan amendment. Let us count every single American, no matter who they are, and count the children.

Mr. Chairman, I rise to speak on the rule which will govern how we proceed on H.R. 4278, the Commerce Justice, State Appropriations bill. I am grateful to the Rules Committee for allowing the Mollohan amendment to be considered which would restore full funding for a fair and accurate census.

The subject of the Census was addressed in Article I Section 2 of the Constitution of the United States as it states, "The actual Enumeration shall be made within three years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years."

With that goal in mind the Bureau of the Census conducted the first National Census in 1790. The census also places our population as it states, "The actual Enumeration shall be made within three years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years."
Congress can be reapportioned and the state and local governments redistricted while federal monies can be apportioned. The ability to use scientific methods during the 2000 Census will insure that any undercounting which may occur in this census because of sparsely populated regions of states like Texas or count urban populated areas like Houston, can be held to a minimum. Undercounting the results of the 2000 Census would negatively impact Texas’ share of federal funds for block grants, housing, education, health, transportation, and numerous other federally funded programs.

In 1990, the city of Houston was undercounted by 3.9 percent in that year’s Census using the current “head count” method which only recorded 1,630,553 residents. That is why I have personally joined a lawsuit along with the mayor of Houston to allow statistical methods to be utilized by the census bureau to be able to count every person.

Based on the scientific method that was prepared for that Census, but never used it is estimated that over 66,000 Houstonians were missed by the 1990 Census. African-Americans, Hispanics, Asians, and American Indians were missed at a much greater rate than whites. The 1990 Census undercounted approximately 4 million people, about the same number who were counted altogether by the census 100 years ago. Even more troubling, this last census was, for the first time in history, less accurate than its predecessor. The use of modern statistical methods to count in the 2000 Census will eliminate undercounting the poor children by 52% and African-Americans by 43%. The undercount was 33 percent greater than the undercount in the 1980 Census.

Every American deserves to be counted in the Census. We must have the most accurate census possible. The 1990 census was the first in history to be less accurate than its predecessor. It missed millions of Americans—predominantly children and minorities. In fact, homeless children are particularly vulnerable; without counting them there will be no housing for them.

In fact, homeless children are particularly vulnerable; without counting them there will be no housing for them. African-Americans, Hispanics, Asians, and American Indians were missed at a much greater rate than whites. The 1990 Census undercounted approximately 4 million people, about the same number who were counted altogether by the census 100 years ago. Even more troubling, this last census was, for the first time in history, less accurate than its predecessor. The use of modern statistical methods to count in the 2000 Census will eliminate undercounting the poor children by 52% and African-Americans by 43%. The undercount was 33 percent greater than the undercount in the 1980 Census.

Every American deserves to be counted in the Census. We must have the most accurate census possible. The 1990 census was the first in history to be less accurate than its predecessor. It missed millions of Americans—predominantly children and minorities. In fact, homeless children are particularly vulnerable; without counting them there will be no seats in school for them, no immunizations for them, and no housing for them.

Virtually every expert agrees that the way to get the most accurate census possible is by using modern scientific methods to supplement the traditional head count. The Census Bureau’s plan will not only produce the most accurate census—it will save literally hundreds of millions of dollars. The Republican plan is geared to undercount the people to their advantage.

Using the 1990 methods will cost close to a billion dollars more and still miss millions of Americans living in the United States. The Republican position is geared to undercount the people to their advantage.

Funding the Census Bureau for only six months will cripple its ability to adequately plan and prepare for the largest peace-time mobilization undertaken by the U.S. Government.

The Mollohan amendment requires the Bureau to continue planning for a Census whether it uses modern statistical methods, or the older, less accurate ones, until there is a definitive ruling from the Supreme Court. We need a statistical method, we need an accurate Census, but we need both.

Finally, the Constitution states specifically, “the actual Enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall direct by Law.” If the Republicans would step aside from politics, clothed in the Constitution we could all absolutely support the Mollohan amendment and support statistical methods for the count.

Mr. ROGERS. Mr. Chairman, I yield such time as the majority consumer to the gentleman from Missouri (Mr. BLUNT). (Mr. BLUNT asked and was given permission to revise and extend his remarks.)

Mr. BLUNT. Mr. Chairman, I rise in opposition to this bill. I do not think there is a single Member of this House that would allow polling to be used to decide election results. We should not allow it to be used for this purpose either.

I rise today in strong opposition to the Mollohan amendment.

Republicans are prepared to fund an unprecedented effort to count all Americans because we believe that every American counts.

In fact, Chairman ROGERS has provided $100 million more than the President requested to help ensure that every American is counted.

The Clinton administration plan will delete millions of people who turn in their census forms on time. These people will be removed at random. A statistical analysis indicates that their demographic group is over-represented.

Americans have the right to participate in the census and have their completed census form included in the count. The Clinton administration cannot arbitrarily decide to delete millions of people from the counts based on population estimates.

The Clinton administration wants to play politics with the census. I urge you to oppose the Mollohan amendment and support an accurate and honest census.

Mr. ROGERS. Mr. Chairman, I yield 1 minute to the gentleman from Florida (Mr. MILLER), chairman of the Committee on the Census.

Mr. MILLER of Florida. Mr. Chairman, there has been a lot of exaggeration on the other side about what has been done with the census. Let us make sure we understand.

First of all, the plan proposed by the President does not count 26 to 27 million people; does not count 26 to 27 million people. These are going to be computer-generated people, that they have some smart computers and these smart scientists over at the National Academy of Sciences, the National Academy of Sciences, that in fact it broke down. It is actually written in the Constitution that we shall have an actual enumeration.

And somehow in the most primitive of circumstances, without Xeroses, without fax machines, they managed to count people.

Then in the modern era several things happened. One is, big government became so incompetent, so bureaucratic, that in fact it broke down.

The census of 1990 was the first time in many years that we actually did an adequate job of counting.

The second thing happened. We developed much higher standards of accuracy.

A third thing happened, which is that some neighborhoods became harder to count, largely for two reasons: one, because some neighborhoods seemed dangerous and people were reluctant to go back in them on a regular basis; and, second, because some neighborhoods had substantial numbers of people who were illegally here and it was tricky to go and knock on the door and say, “Hi, I am from the government,” because people then tended to not answer the door.

They of course there were undercounts to some degree. We are also now dramatically more mobile, although the truth is, if you went back to 1790 or 1830, this has always been a remarkably mobile country, but we are now even more mobile. People move around a lot. You see this, for example, in school registrations where kids will come and go in three month cycles rather than year long cycles.

Having said all that, I want to make clear that our opposition is. We are prepared to work with the Democratic Caucus to provide the resources to count accurately every person in America. We are prepared, if necessary,
to hire the Post Office, which has the highest level of accuracy in knowing neighborhoods. We are prepared to start by counting the poorest neighborhoods first so we have the highest level of controlled, managed accuracy. We want to ensure that every single American is counted in the 2000 Census.

But here is the danger. There is a theory. The theory is you could take polls. First of all, if you look at the accuracy of the polls taken last year in the Presidential campaign, they were often off by as much as 10 points. Most of you have been elected in races where you know from your own polling you were often off, up or down, by 5 or 10 points in the poll. You can take polls theoretically. But there are two dangers with taking polls. The first is, what works in aggregate at a national level is absurd at a local level. The mathematician at the National Academy of Sciences could say, gee, on aggregate if you are trying to measure 262 million people, artificially do not count people, so you create an artificial universe to get an accurate count of 262 million. That sounds theoretically fine. The flaw is, if you are trying to count Roma, Serbians, and El Salvadorans in Los Angeles, polling is the worst possible way to do it because you get grotesquely inaccurate numbers. So you do not get an actual count. You do not know who is actually there. What you get is some mathematical theory that works nationally and is grotesquely distorted at the local level.

There is a second problem. Who is going to be in charge of the polling? This is the whole base of the Founding Fathers in the Federalist Papers and the Constitution. The current Secretary of Commerce, who is a man I admire a great deal and worked with in passing the North American Free Trade Agreement, represents a family who for many years had held office in Chicago based on a machine. Chicago is a city with a great history that you could vote for several lifetimes because you could vote long after you passed away. But at least in Chicago you had to have lived; that is, you were in the cemetery because you had once been alive.

Now we have this new theory, which is that politicians could simulate a virtual reality of virtual citizens who for many years had held office in Chicago based on a machine. Chicago is a city with a great history that you could vote for several lifetimes because you could vote long after you passed away. But at least in Chicago you had to have lived; that is, you were in the cemetery because you had once been alive.

We will design it so we use, if necessary, postal employees. We will design it so we start with the poorest neighborhoods. We will design it so we overachieve and we double, triple and quadruple count, if necessary, but we will get it done. But that would be fair. That would be accurate. That would ensure we actually had enumerated real people.

But please do not ask the people of the United States to rely on politicians controlling pollsters to invent virtual people to get a grossly inaccurate count on behalf of some political party, because that undermines the Constitution and that undermines the very political process.

I urge a “no” vote on the Mollohan amendment.

Mr. STARK. Mr. Chairman, I rise today in support of the Mollohan amendment to H.R. 4276, the Commerce-Justice-State Appropriations for FY 1999. The Mollohan amendment removes funding restrictions from the Census Bureau so that they may continue with the task at hand—providing a fair and accurate Census 2000.

The goal is clear. The only way to provide a fair and accurate count for the 2000 census is through statistical sampling. The Republican-led Congress insists on full enumeration without the use of sampling. In addition, they are trying to obstruct the entire 2000 census by limiting its funds to only half of the appropriated amount. This in turn may cause irreparable damage to the entire census, leaving an accurate count beyond the realm of possibility.

One point wonder why the majority party insists on wasting taxpayer’s money to hinder such a vital component of the democratic process. Understandably, the majority party is afraid of losing control over the House of Representatives as we enter a new millennium. Our Founding Fathers intended for population enumeration to provide for fair representation of the American people in the House of Representatives. This did not happen in the 1990 Census and now we must take steps to correct the problem.

In the 1990, the Census numbers were over 10 percent in error. This translates to 26 million mistakes. The 1990 Census under-counted 8.4 million people and 4.4 million people were double-counted in the United States. In California alone, 834,516 people were not counted. This was the highest under-count in the nation!! The people of California have been deprived of fair representation for the past eight years.

Of the various racial groups, the largest to be under-counted were amongst the Hispanic population, representing a disproportionate number of minorities. In addition, 4.4% of blacks and 4.5% of Indian Americans were under-counted due to errors that statistical sampling can adjust for in the future. The economically disadvantaged and minorities are being excluded from valuable federal programs. Under-counting means millions of federal dollars are lost for California’s 13th District as well as for districts across the nation.

I am not suggesting we replace direct counting methods with modern statistical techniques. We should, however, supplement direct counting with sampling to ensure an accurate count. Two very reputable groups agree that statistical sampling should be used in the upcoming census. The General Accounting Office and the National Academy of Sciences both endorse statistical sampling to avoid an inaccurate census. Memos from the Department of Justice under both Presidents Bush and Clinton state that the use of sampling is both Constitutional and legal. The only major organization that opposes statistical methods is the Republican National Committee.

Partisan politics cannot play a role in Census 2000. We must prevent the majority party from attempting to strip the American people from their Constitutional right to equal representation. We can start by supporting the Mollohan amendment.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I urge all my colleagues to support the Mollohan amendment. A fair and accurate census is necessary if we are to be a country which stands for inclusion over exclusion.

The infamous census of 1990 missed 4.7 million people—1.8 percent of the population, compared with 1.2 percent in 1980 and 2.7 percent in 1970. This undercount was not evenly distributed—a disproportionate number of minorities, children and renters in urban and rural areas were missed.

In addition, the census cost us an exorbitant amount of money—$2.6 billion dollars—for a fair and accurate count.

This is upper income people are over-counted by an unknown number because of completing their forms at their second homes as well as their primary residences. I support the methodology of statistical sampling. The American Statistical Association, the Population Association of America, and the Panel to Evaluate Alternative Census Methodologies at the National Academy of Sciences has recommended this methodology as the best and cheapest way to count 90 percent of U.S. residents.

In Texas, we need all our residents counted, specially the Latino population.

In the Latino community, there was a 5% undercount in the 1990 census. This undercount has had significant negative effects on Latino access to resources.

I urge my colleagues to support the Mollohan amendment so that all our residents are counted, and not missed by the blinded eye.

Mr. THOMPSON. Mr. Chairman, the 2000 Census must be the most accurate census ever taken in American history. Period. I can not understand the controversy that surrounds this issue. Everyone seems to agree that the most relevant, current scientific methods should be used to count every single man, woman, and child in this country.

So what is the problem? Why can certain members come to the floor and make the most irrelevant, current scientific methods for Census 2000 for the American people.

The facts surrounding the 2000 census are simple and conclusive. We know that the 1990 census resulted in over one million Americans not being counted. Most of those individuals were people of African American, Latino, and Asian descent. They were urban, poor and rural. We know that a large portion of the undercount consisted of children. We know
that the 1990 census was not nearly as accurate or representative as it should have been.

As Members of Congress, its our responsibility to work with the Census Bureau—n—against them—to develop a method that will count every American in this nation. Holding the 2000 Census hostage to ridiculous partisan games will do nothing but undermine the legitimate efforts being made to accurately enumerate American citizens.

Personally, I'm less concerned with the partisan tone this debate has taken than I am with ensuring the Mississippians who were missed in the 1990 census. More than 21,000 of the 55,500 Mississippians who were missed in the last Census, 38%, were from Mississippi's Second Congressional District, the District I represent. Let's look at who they were: 1.0% were White; 3.5% were African American; 3.6% were Asian; 7.3% were Native American; 4.8% were Hispanic; and 4.5% were children.

The real, tangible impact of this debate has been glossed over. According to the Census Bureau, my District has the third highest percentage of people in poverty (37.7%). It has the fifth highest percentage of families in poverty (31%), and the third highest percentage of households in poverty (35.2%). This year, some of the counties in my District have had unemployment rates of 20% and higher. What we are really talking about here, is that the 55,500 people in my state who were not counted, represent children who were turned away from HeadStart, poor families who could not get public housing, and other vulnerable constituencies who were turned away from receiving forms of invaluable financial aid.

I know that many Members of Congress have adopted a real "slash and burn" mentality when it comes to budgetary spending, but I refuse to be a hypocrite. I will say right here, right now that if families and children in my District will positively benefit from federal funding, then let's see it. Otherwise, I urge you to support Mr. Mollohan's amendment.

The question was taken, and the Chairman announced that the ayes appeared to have it.

A recorded vote was ordered.

The question is on the amendment offered by the gentleman from West Virginia (Mr. Mollohan). The question was taken; and the Chairman announced that the ayes appeared to have it.

AYES—201

A recorded vote was ordered.

The question is on the amendment offered by the gentleman from West Virginia (Mr. Mollohan). The question was taken; and the Chairman announced that the ayes appeared to have it.

The vote was taken by electronic device, and there were—aye votes 201, noes 227, not voting 7, as follows:

[Roll No. 388]

AYES—201

A recorded vote was ordered.

The CHAIRMAN. The question is on the amendment offered by the gentleman from West Virginia (Mr. Mollohan).

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

RECORDED VOTE

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

A recorded vote was ordered.

The CHAIRMAN. Pursuant to House Resolution 508, the Chair will reduce to 5 minutes the minimum time for each electronic vote on the amendments that were debated last evening, on which proceedings will resume immediately after this 15-minute vote on the Mollohan amendment.

The vote was taken by electronic device, and there were—aye votes 201, noes 227, not voting 7, as follows:

[Roll No. 388]
Mr. RIVERS and Mr. OWENS changed their vote from "no" to "aye." So the amendment was rejected.

The result of the vote was announced as above recorded.

SEQENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to House Resolution 508, proceedings will now resume on those amendments on which further proceedings were postponed in the following order:

Amendment No. 44 offered by the gentleman from New Jersey (Mr. PALLONE); the amendment offered by the gentleman from New York (Mr. ENGEL); amendment No. 15 offered by the gentleman from California (Mr. ROYCE); amendment No. 3 offered by the gentleman from Maryland (Mr. BARTLETT); and amendment No. 8 offered by the gentleman from Maryland (Mr. ROYCE); and amendment No. 8 offered by the gentleman from Maryland (Mr. BARTLETT); and amendment No. 8 offered by the gentleman from Maryland (Mr. ROYCE); and amendment No. 8 offered by the gentleman from Maryland (Mr. BARTLETT); and amendment No. 8 offered by the gentleman from Maryland (Mr. ROYCE).

AMENDMENT NO. 44 OFFERED BY MR. PALLONE

The CHAIRMAN. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from New Jersey (Mr. PALLONE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 44 offered by Mr. PALLONE:

Page 52, line 13, after the dollar amount, insert the following: 
"(increased by $8,000,000).

Page 52, line 25, after the dollar amount, insert the following: 
"(increased by $8,000,000).

Page 53, line 1, after the dollar amount, insert the following: 
"(increased by $8,000,000).

Page 53, line 5, after the dollar amount, insert the following: 
"(increased by $8,000,000).

Page 54 line 18, after the dollar amount, insert the following: 
"(reduced by $15,000,000).

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—aye 158, noes 267, not voting 9, as follows:

[Roll No. 389]

AYES—158

Ackerman
Allen
Andrews
Balanced
Ballenger
Barcia
Bass
Becerra
Berman
Bilbray
Bishop
Blagovich
Blumenauer
Boehlert
Bonior
Boriski
Brady (PA)
Brown (OH)
Burr
Buxton
Capps
Cardin
Carson
Castle
Casino
Clement
Costello
Cummings
DeGette
Delahunt
DeLauro
Dingell
Doggett
Ehlers
Ensign
Engel
Farr
Filner
Fonseca
Fox
Frank (MA)
Frehlinghusen
Furse
Gehrke
Ghilès
Gilman
NOES—267

Abercrombie
Aderholt
Archer
Armey
Baker
Barrett (NE)
Barrett (WI)
Bartone
Bartman
Bereuter
Berry
Bilirakis
Billie
Boehner
Bonilla
Bono
Bowser
Boucher
Boyd
Brady (TX)
Brown (CA)
Brown (FL)
Bryant
Burke
Bush
Caldwell
Callahan
Calvert
Camp
Canady
Capp
Chabot
Chenoweth
Christensen
Clay
Cunningham
Gonzalez
Waters

[Page 53, line 5, after the dollar amount, insert the following: (increased by $8,000,000)].

Page 52, line 25, after the dollar amount, insert the following: (increased by $8,000,000).

Page 53, line 1, after the dollar amount, insert the following: (increased by $8,000,000).

Page 53, line 5, after the dollar amount, insert the following: (increased by $8,000,000).

Page 54 line 18, after the dollar amount, insert the following: (reduced by $15,000,000).

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—aye 158, noes 267, not voting 9, as follows:
The vote was taken by electronic device, and there were—ayes 137, noes 291, vote.

The vote was recorded.
Mr. SESSIONS changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 3 OFFERED BY BARTLETT OF MARYLAND

The CHAIRMAN. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Maryland (Mr. BARTLETT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. BARTLETT of Maryland:
Page 78, strike line 15, and all that follows through line 6 on page 79.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 151, nos 279, not voting 4, as follows:

[Roll No. 392]

AYES—151

[Names of representatives voting "ayes"

NOES—279

[Names of representatives voting "noes"

Mr. KINGSTON changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 8 OFFERED BY MR. TALENT

The CHAIRMAN. The unfinished business is the demand for a recorded vote on the Amendment No. 8 offered by the gentleman from Missouri (Mr. TALENT) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. TALENT:
Page 102, line 15 insert "(increased by $7,090,000)" after the dollar amount.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 312, noes 114, not voting 8, as follows:
Ms. LEE changed her vote from "aye" to "no." Ms. BROWN of Florida changed her vote from "no" to "aye." So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN pro tempore (Mr. PEASE). Are there further amendments?

AMENDMENT OFFERED BY MR. STEARNS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows.

Amendment offered by Mr. STEARNS: Page 78, line 19, strike "$475,000,000," and insert "$365,800,000.

The CHAIRMAN pro tempore. Pursuant to the order of the House of Tuesday, August 4, 1998, the gentleman from Florida (Mr. STEARNS) and a Member opposed each control 7½ minutes on the amendment.

The Chair recognizes the gentleman from Florida (Mr. STEARNS).

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

Mr. Chairman from the amendment would strike $109.2 million in the bill for United States arrears to the United Nations. Now, earlier we had an amendment from the gentleman from Maryland (Mr. BARTLETT) which struck all the money. I am striking less than 25 percent. So this is a modest proposal, and I hope my colleagues will take that into consideration, because I saw that the gentleman from Maryland (Mr. BARTLETT) lost on his amendment.

According to the GAO study released in June of 1998, the United Nations itself recognizes that the UN owes the United States about $109.2 million for reimbursement for U.S. contributions for peacekeeping. The chart I have here on the chart from the Government Accounting Office shows that the United States is owed the second highest amount of reimbursement for peacekeeping operations, second, of course, only to France, at $151.2 million.

Of course, the $109.2 million that I propose in my amendment the UN does recognize does not take into account the multimillions we have spent in various peacekeeping operations, as my good friend from Maryland (Mr. BARTLETT) has already pointed out.

Mr. Chairman, I personally applaud the Committee on Appropriations for what they are doing, trying to pare down the U.S. arrears amount, specifically in regard to the peacekeeping effort. The appropriators have provided a reduced amount of $475 million from what the accounting-impared United Nations claims is owed, and the appropriators are appropriating this appropriation to actual authorization legislation that is intended to push reform at the United Nations.

The GAO report indicates that the UN even calculates peacekeeping arrears amounts that we are intentionally withholding for legislative and policy reasons. For instance, Congress placed a cap on the peacekeeping assessment charged by the UN. The UN at that time assessed a peacekeeping charge to the U.S. at an exaggerated 31.7 percent rate that was set by the General Assembly to cover peacekeeping contribution shortfalls resulting from the breakup of the Soviet Union.

Congress thought that the assessment rate was too high and implemented a policy cap for the peacekeeping at 30.4 percent, which was still too high, in my opinion. But even this reduction reduced our financial obligation to the UN for peacekeeping by $123 million.

After the UN peacekeeping fiasco in Somalia, in which 19 heroic American service members lost their lives, Congress in 1995 further pursued a legislative cap on peacekeeping assessments at 25 percent after October 1, 1995. This lower assessment pursued by Congress has led to an additional $128 million in American taxpayer savings. But instead of recognizing that the U.S. has chosen for valid policy and legislative reasons to permanently withhold $251 million from the UN, for future peacekeeping assessments, the UN is still maintaining, is still maintaining, Mr. Chairman, we owe them an additional $251 million.
I strongly believe that we need to further reduce this funding for peacekeeping arrears, to continue sending to the Secretary General and the rest of the United Nations a message that dramatic, widespread reform has to be implemented, including significant bureaucratic staff cuts and budget reductions.

My continued problem with the United Nations is its refusal to implement such reforms, although the U.S. has been breathing down its neck for some time.

Mr. Chairman, the Washington Post quoted the former UN Secretary General Boutros Boutros-Ghali as saying that, “Perhaps half the United Nations staff does nothing useful.”

Congress has consistently demanded reductions in the UN worldwide staff of 53,000 people, not including 10,000 consultants or the peacekeeping forces which reached 80,000 in 1993. As you saw in the Washington Times yesterday, they have not been generous in salary and benefits package in public life. In fact, the United Nations donates 16 percent of your salary in your thrift savings accounts, in addition to your 7.5, and you are almost up to 24 percent of your salary. You know, if you saw, the Secretary General makes $300,000, and there are roughly 3,622 of these people who range from almost $50,000 to $300,000 in salary.

Most UN salaries are tax-free. Many employees have rent subsidies up to $3,800 a month and also have annual education grants of $12,675 per child. We could perhaps argue on the floor today about these perks, and colleagues on this side or that side that defend the UN will say “Well, Cliff, you are exaggerating.” I would just like to say that if you read the Washington Times article, it is pretty clear that all of us would agree it is pretty generous.

What is the solution? Well, the Secretary General says they are going to do reform. They plan to consolidate 12 secretarial departments into five. Remember now, he is just taking these 12 departments and making five of them, but he is not reducing, not cutting, any employee in these 12 departments. He has a 9,000-strong secretarial staff.

The Secretary General also proposes three economic development departments representing $122 million of the Secretary’s budget and employing 700 people and one secretariat. Again, he is talking about reform but there is no reduction in employees or expenditures. No reduction in people, no reduction in expenditures, and he calls that reform. Any of the Fortune 500 companies who did that would be laughed out of the convention center by their stockholders.

Also two human rights offices in Geneva are merged into one. That sounds good. But, again, no reduction in employees.

Mr. Chairman, I do not think there has been any reform by the Secretary General, and I would be glad to hear if my opponents disagree. But I say we must continue in Congress to limit any appropriations for alleged U.S. arrears until a comprehensive reform plan is in place at the United Nations. As a responsible representative of these great American people, we can do nothing less this afternoon.

So I urge my colleagues to support my modest amendment, modest amendment, to reduce the money from the appropriators, roughly $475 million, just reduce it by $109.2 million.

Mr. Chairman, I will conclude by saying that regardless of what side you are on in this debate, you have to understand that any bureaucratic institution can reform itself and reduce its staff, but this body is not doing it. I urge Members to support my amendment.

The CHAIRMAN pro tempore. Does any Member seek time in opposition to the amendment?

Mr. ROGERS. Mr. Chairman, I claim the time in opposition.

The CHAIRMAN pro tempore. The gentleman from Kentucky is recognized for 7½ minutes.

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

Mr. Chairman, the notion of reducing arrears at the United Nations is a good idea. The only problem is that in the Gilman-Helms authorization conference report which we refer to, this credit has already been used to reduce the amount of arrears that will be paid, so these funds have already been used up.

Agreeing to this amendment will do nothing more than undermine the authorization bill that is currently pending. So it puts at risk the entire scheme to obtain reforms, reduce the U.S. assessment rate, write off remaining arrears, and cap appropriations to international organizations, which this subcommittee has been trying to do for many years.

So the gentleman’s idea is a good idea. In fact, it is such a good idea, we have already done it. It assures that the U.N. makes good on what it owes the U.S., but it has already been done. So, consequently, I oppose the amendment and urge Members to vote “no.”

Mr. Chairman, I yield 1 minute to the gentleman from West Virginia (Mr. MOLLOHAN.)

Mr. MOLLOHAN. Mr. Chairman, I guess I, in a way, am repeating some of the sentiments the chairman expressed. I do not buy the theory of this amendment. As I understood it, we have used these strong negotiations and the leverage of the Committee on Appropriations to effect significant reforms at the United Nations. And while the gentleman, as I understood his statement, stated that we have not effected reforms, that is not my understanding.

We have a budget cap at the UN. We have reduced employment by 1,000. I claim this afternoon. The United Nations, we have a Secretary General function operating and we have new financial management, and we have combined departments.

Now, one might draw a bottom line on all that and say it equals zero. I would draw a bottom line on it and say we have been pretty darn successful in moving a large organization in the right direction. I think this effort to cut the appropriation, which is the very incentive to effect these reforms, is the exact wrong thing to do.

Mr. ROGERS. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. GILMAN), the chairman of the Committee on International Relations.

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

Mr. GILMAN. Mr. Chairman, I thank the gentleman for yielding time.

Mr. Chairman, I rise in opposition to the amendment offered by the distinguished gentleman from Florida (Mr. STEARNS). I believe the adoption of this Stearns amendment to cut our efforts to achieve meaningful permanent reforms at the UN, and would actually prevent the U.S. from reducing our annual assessments to the UN. The UN has already embarked on a series of so-called Track-2 reforms that will streamline their departments, reduce staffing and improve the efficiency of their operations based upon our initial discussions with them about the amount due from the United States. For a largely token reduction in our arrearage payments to the UN of $109 million, we would be jeopardizing our efforts to lower our assessments from 25 to 22 and actually 20 percent, and in the process, would prevent us from realizing taxpayer savings of up to $1 billion over a 10-year time frame.

Moreover, on March 26 of this year, by voice vote, the House passed an authorization measure authorizing the payment of UN arrearages in exchange for the implementation of a comprehensive package of reforms which are already under way.

We should not be taking any nickel and dime approaches embodied in this amendment. As the chairman of the Committee on International Relations, I will be working with our colleagues on the Committee on Appropriations to assure timely and prompt reimbursement and repayment of U.S. costs associated with U.S. peacekeeping operations. Moreover, over the past 5 years our overall peacekeeping costs have dropped by over 60 percent, and, in the process, would prevent us from realizing taxpayer savings of up to $1 billion over a 10-year time frame.

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Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. GILMAN), the chairman of the Committee on International Relations.

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

Mr. GILMAN. Mr. Chairman, I thank the gentleman for yielding time.

Mr. Chairman, I rise in opposition to the amendment offered by the distinguished gentleman from Florida (Mr. STEARNS). I believe the adoption of this amendment would prevent our Nation from, one, putting a cap on our contribution to all international organizations at $900 million per year; second, that we will retain our voting rights at the U.N. General Assembly; and third, mandating that the U.N. has instituted a procurement system prohibiting punitive actions against contractors that challenge contracts and complain about delayed payments.

Accordingly, Mr. Chairman, this amendment is counterproductive.
urge my colleagues to vote no on the Stearns amendment.

Mr. ROGERS. Mr. Chairman, I yield the balance of my time to the gentleman from California (Mr. BERNAN), ranking member of the Committee on International Relations.

Mr. BERNAN. Mr. Chairman, I thank the gentleman from Kentucky (Chairman ROGERS) for yielding time to me.

To my distinguished colleague, the gentleman from Florida (Mr. STEARNS), I would recommend the go see a movie called The Producers, a Mel Brooks film, where two guys are putting together a play they were sure would be a flop. It was called Springtime for Hitler. They sold 1,000 percent of the play. Knowing it would fail, but it turned out the play was a big hit, and now they have to deal with all the people they had promised this.

As the gentleman from Kentucky (Mr. ROGERS) pointed out, a deal was made, but appropriations language on the floor of both Houses in the majority party and the appropriators to deduct $109 million because of the offsets of the money that we have paid. We can get into a great debate about whether we should have done this, but it is done.

The authorization plan lays out in tranches, contingent on certain reforms, this payment schedule. Last year the gentleman from Kentucky (Chairman ROGERS) appropriated $100 million as the first tranche. Now we are at the second tranche. Next year will be the third tranche. The total figure comes to somewhere around $800 and something million. I do not remember the exact dollar amount. It already deducts the $109 million.

To do this now is to sell the same deal once again, double the amount of the offset, over what it legitimately should be. So even on the mathematics, even if we accept every premise of everything the gentleman has said, and even if we take the fact that the money is contingent on one, the passage of an authorization bill, if I am correct, and secondly, the implementation of reforms, which the authorization is geared to, even if we accept all of that, this amendment should still be voted down because we have already deducted the $109 million from the total amount that we are authorizing and appropriating, according to this 3-year schedule.

This first amendment should really be withdrawn. If it is not going to be, I would urge my colleagues to reject it, because the whole logic of it is faulty. The money has been taken. The money will be contingent on the reforms the gentleman seeks, and the whole appropriation is contingent on the passage of an already-adopted authorization which has been left hanging only because of a dispute about the family planning monies and the Mexico City policy. So I urge a no vote.

Ms. LOWEY. Mr. Chairman, I rise in strong opposition to the Stearns amendment.

Congressman STEARNS and I agree on one thing: The provisions relating to the United Na-
August 5, 1998

CONGRESSIONAL RECORD – HOUSE

H7219

The CHAIRMAN pro tempore. The Clerk will designate the amendment. The text of the amendment is as follows:

Amendment printed in House Report 105-642 offered by Mr. CALLAHAN.

Page 62, beginning at line 15, strike section 641 offered by Mr. CALLAHAN:

Page 62, beginning at line 15, strike section 210 and insert the following:

SEC. 210. (a) IN GENERAL.— Each of the States of Alabama, Louisiana, and Mississippi has exclusive fishery management authority over all fish in the Gulf of Mexico within 3 leagues of the coast of that State, effective July 1, 1999.

(b) Fish definition.—In this section, the term “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

The CHAIRMAN pro tempore. Pursuant to House Resolution 508, the gentleman from Alabama (Mr. CALLAHAN) and a Member opposed will each control 10 minutes.

The Chair recognizes the gentleman from Alabama (Mr. CALLAHAN).

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

Mr. Chairman, the language included in my amendment is an effort to provide for fisheries enforcement for the States of Alabama, Louisiana, Mississippi, with the States of Florida and Texas. These jurisdictions were originally agreed to as part of the treaty agreements which brought each State into the Federal union.

The amendment which I am proposing today would clarify some technical concerns, and allow that date certain implementation of July 1, 1999, which would allow the States of Alabama, Louisiana, and Mississippi an appropriate amount of time, timetable for the execution of this jurisdictional provision.

It would replace the nine mile provision contained in the bill as passed by the Full Committee on Appropriations, which would replace the States of Alabama, Louisiana, and Mississippi an appropriate amount of time, timetable for the execution of this jurisdictional provision.

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It would replace the nine mile provision contained in the bill as passed by the Full Committee on Appropriations, which would replace the States of Alabama, Louisiana, and Mississippi an appropriate amount of time, timetable for the execution of this jurisdictional provision.

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

Mr. GILCHREST. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Maryland (Mr. GILCHREST) is recognized for 10 minutes in opposition.

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

Mr. Chairman, I rise in reluctant opposition, because I think the motivations on the part of the people that want to extend the State jurisdiction for Mississippi, Alabama, and Louisiana are of the highest, and I think they want to do their best for people that they represent in this particular area.

My opposition comes in three areas. One is an area that we always discuss here on the House floor, the difference between an appropriation jurisdiction and an authorization jurisdiction.

There were no hearings held in this particular legislation. We do not know its impact on the States. We do not know its impact on the commercial fishery. We do not know its impact on the charter boat fishery. We do not know its impact on the shrimp fishery.

There is a whole range of questions that are still outstanding that we do not have any real answers for that could be resolved through hearings.

Let me discuss briefly some of the volatile debates we had here in the Gulf of Mexico, how we have always had problems with logging issues. Through the course of hearings, we came up with, in northern California, the Quincey Library solution, with the gentleman from California (Mr. WALLY G. GILCHRIST).

We have seen solutions with the Committee on Agriculture on logging and grazing. A couple of years ago this Congress, in a bipartisan way, came to a deal to handle the Magnuson Act, which was to have a plan across State boundaries, across the wide oceans of the jurisdiction that the United States has in its coastal areas, to understand the need for good, science-based management plans on a resource that can be overfished.

So, number one, it is really important, it is vital, not only for this Congress but for the very fishermen in the Gulf of Mexico, for us to understand the full ramifications of what this amendment will do, what this rider will do, without any hearings.

Number two, this, I guess, could be stated as an unfunded mandate. I want to read two short paragraphs, one from the Governor of Louisiana and one from the Department of Resource and Environment in Mississippi. The Governor of Louisiana says: “I am also advised that the bill is an unfunded mandate, and provides no funds for Louisiana’s Department of Wildlife and Fisheries to perform the functions required,” and that the bill may be effective as early as, and we now know it would not be effective until July 1, 1999.

We are looking into the issue of an unfunded mandate. Basically Mr. Woods from Mississippi says the same thing. How will they develop their management plan? What will that cost? What are the costs of enforcement?

I would like to make a quick comment about the Coast Guard in response to my good friend, the gentleman from Alabama (Mr. CALLAHAN).
While the Coast Guard is out there monitoring the fishing, they are also monitoring illegal immigrants to our country. They are also checking drug interdiction. They are also looking into environmental pollution.

There are a number of things that the Coast Guard does with fisheries enforcement, not to mention the fact it is a huge, many multibillion dollar industry, that the Coast Guard is out there preventing many other countries from illegally fishing in our waters.

The comment I want to make is about conservation. I want to focus on the red snapper in particular. The red snapper, mature red snapper fish are for the most part caught outside State waters. That is outside of 9 miles if this passes. That is fine. But the immature red snapper, 80 percent of the immature red snapper fish are within State waters. Many of those red snappers, without bycatch reduction devices, are lost to bycatch. That means they are lost and they can never be caught by the commercial fishermen outside these territorial waters who, by the way, the commercial fishing communities, the red snapper commercial fishermen are opposed to this amendment.

If we do not have some sense of where the waters flow, about how to consistently manage and sustain these resources, we are going to lose these resources. So for a conservation effort to increase the stock of red snapper, to find the way to manage the shrimp trawling industry, we need to defeat this particular amendment by the gentleman from Alabama.

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

Mr. CALLAHAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Louisiana (Mr. LIVINGSTON), chairman of the Committee on Appropriations.

Mr. LIVINGSTON. Mr. Chairman, in deference to the arguments advanced by my former shipmate, the gentleman from Maryland (Mr. GILCHREST), an outstanding Congressman, an ex-marin, and a great American hero, I would simply say that I respectfully disagree with him on this point.

We are always hearing about federalism, states' rights, power to the States. I think that means equal power to the States and that all Americans stand equally under the eyes of the law. That is not the case when it comes to limits for fisheries or for any other purposes of the Outer Continental Shelf.

The fact is my good friend, the gentleman from Louisiana (Mr. TAUZIN) will say, red snapper are doing fine. There are plenty of red snapper. And the unfunded mandates, I do not think that is a problem because the Federal Government did not worry about that when they made the shrimpers carry BRDs or TEDs or any of the other exclusion devices that they mandated from here in Washington, so the unfunded mandates really is not an issue.

What is an issue is federalism, equal opportunity for States. In Alaska, they have a 12-mile limit, extending their jurisdiction out 12 miles for the supervision of some of their fisheries. In the States of California and Oregon and Washington, for the purpose of supervising the development of a particular species of crab they are talking about 200 miles, 200 miles reaching out beyond the borders of their shorelines.

In Texas and Florida, with the last time I looked at my map bounded the States of Alabama, Mississippi and Louisiana, the outreach is 9 to 10 miles. But for whatever reason, and I did inquire of my friend from Maryland the other day what the reason was, he says, you guys came into the country under different circumstances, almost 200 years ago, whatever reason it is, we have got a 3-mile limit in Louisiana. Mississippi and Alabama have a 3-mile limit.

If Texas and Florida are on either sides of us on the Gulf of Mexico and if they have to live by certain fisheries rules, I think the fish swim in the same water. They do not stop at the border. If they are far out, am I in a Texas border or am I in a Florida border, and then I can swim out 10 miles, but I am in the Louisiana border, I can only swim out 3 miles. That is ridiculous.

We ought to have the same rules, the same laws, for the fish and the people. The outreach ought to be the same number of miles, whether it is 3 miles or 10 miles, it ought to be the same. Texas and Florida do not want to go to 3 miles. They want to stay at 10 miles. So it seems only proper that Mississippi, Alabama and Louisiana ought to be 10 miles as well.

The opponents of this amendment do not want this extension of fishery rights for our states but, just the past Monday under suspension of the rules, they granted the states of California, Oregon, and Washington state jurisdiction for a major crab fishery out to 200 miles.

Opponents are trying to claim in the “Dear Colleagues” that the states of LA and Mississippi are opposed to these extensions, that they are an unfunded mandate.

But, if you read the letters from these two states you will see that they support extending jurisdiction out to 9 miles if the extension is delayed and if we provide Federal funds to implement state’s laws.

The revised Callahan amendment provides this extension by not implementing an extension of the state boundary for fisheries until July, 1999.

And, while direct funding to the states is not provided in this amendment—the Federal government already has grant programs, enforcement dollars and mechanisms in place through the Dingell-Johnson act and this very bill to provide states assistance in managing their fishery resources.

Opponents claim that the Callahan amendment will mean that some fishermen, particularly shrimp fishermen, will have an easier time in Louisiana, Mississippi and Alabama because their state laws or regulations do not yet require that Fish Excluder Devices (FEDs) or Bycatch Reduction Devices (BRDs) be put in their nets.

Again, the Callahan amendment is not effective until July 10, 1999, so it will give the states plenty of time to require BRDs or FEDs, if they choose to require.

The Callahan amendment would leave management of red snapper and other resources to the states where it will be more consistent and fair.

The Commerce Department’s National Marine Fisheries Service (NMFS) and NOAA have consistently failed to develop fair and practical regulations based on all the available scientific data and economic impacts to fishermen.

NMFS consistently has used “selectively” chosen data to mandate new regulations like BRDs or FEDs that are advocated by so many here today.

Remember, this (BRD) or Bycatch Reduction Device is really a fancy name coined by the National Marine Fisheries Service (NMFS) so they would not have to call these devices FEDs, Fish Excluder Devices.

These BRDs or FEDs are an unfunded mandate implemented by the Dept. of Commerce and NMFS last April and May for well over 3,000 shrimp fishermen in the Gulf of Mexico to put in his or her shrimp nets because its “scientific data” proved that these devices will help prevent what they termed was significant red snapper bycatch.

When these FEDs or BRDs were mandated by the Federal Government in April of this year, there was no Federal funding that came with this mandate for the over 3,000 shrimp fishermen throughout the Gulf of Mexico.

Between the equipment you have to buy, the number of nets you have to modify, and the labor, these FEDs cost each shrimp fishermen an average of nearly $200—and this does not take into account the extra fuel and other expenses they have to consume to make up for the shrimp lost because the shrimp fishermen now have a TED and a FED in their nets.

And, when the FED/BRD mandate came out earlier this year, there was only one NMFS or Government approved device that the fishermen were allowed to use. It was not until opening day of shrimp season that NMFS approved a second version.

At the same time NMFS was mandating a FED/BRD requirement they said in the same rulemaking that they would conduct a “four month, intensive research effort” * * * at sea to test the effectiveness of BRDs at reducing the mortality of juvenile red snapper. The research will conclusively determine the effectiveness of BRDs under actual operating conditions.”

If they did not have the data and proof, under actual working conditions, why didn’t NMFS implement a voluntary program with fishermen as opposed to a Federal un-funded mandate?

Also, talk about selective use of data, just 5 months earlier (in December, 1997) NMFS officials, based on the “science they developed”, mandated that shrimp fishermen could no longer use certain types of NMFS previously approved “soft” TEDs, turtle excluder devices.

NMFS mandated this because they had new “science” that indicated that soft TEDs were
not as effective as “hard” TEDs in releasing endangered sea turtles. For the uninhibited, “soft” TEDs use rope or flexible rigging as opposed to “hard” TEDs that use metal or firm rigging.

NMFS went ahead with the mandate to eliminate soft TEDs for its approved NMFS soft TEDs despite the fact: (1) Most Gulf shrimpers used soft TEDs and would have to replace those TEDs with new ones (In fact shrimper compliance with all TEDs was over 97%); (2) That NMFS was already planning to require BRDs or FEDs; (3) And, that NMFS’ own “scientific” and “other science” strongly indicated that most of the soft TEDs used by shrimpers also happened to be excellent Bycatch Reduction or Fish Excluder Devices; and (4) And, that NMFS’ “science” and “data” justifying the elimination of soft TEDs was only based on 2 small tests.

NMFS takes away one device, soft TEDs, they mandated years ago and that shrimpers were complying with at a 97% compliance rate, even though they had enough science to show that they helped reduce bycatch—something that 3 to 6 months later fishermen must use totally different devices for.

All these inconsistent and irrational Federal policies and regulations in the name of protecting the red snapper.

A species, despite what many claim, is not declining.

The same Gulf of Mexico Fishery Management Council, that opponents say oppose the Callahan amendment, said last February, when it approved a 9.12 million pound catch for red snapper for this year, that the “red snapper is in a recovery phase.” (and) positive growth indicators include 5 years of increasing recruitment, increasing numbers of older fish, increasing size of fish harvested, increasing catch rates in the fishery, and expanding juvenile distribution. “...

An independent red snapper stock assessment sanctioned by NMFS, and that was conducted by a Dr. Rothschild and the University of Massachusetts, concluded that the red snapper stock appears to be “healthy” and that “recruitment” is increasing.

NMFS can use this stock assessment. They used their “own developed science” to conclude that the red snapper stock was still threatened enough to require the mandatory use of BRDs or FEDs.

Again, extending this fish boundary for our states does not make it easier on fishermen. Louisiana has as tough or comparable fisheries enforcement laws in almost every area that the Feds do.

In cases where someone catches beyond their limit or is a consistent violator, Louisiana, like the Feds, requires criminal fines, allows fines to be paid to the state to help towards expenses.

This is despite the fact that Louisiana is responsible for over 75% of our entire nation’s OCS oil and gas production.

I can tell you that we are environmentally sensitive—our state leadership is known for its track record on our fisheries, especially recreational fisheries.

It is good enough for Alaska, Texas, Florida, Oregon, California and Washington—it should be good enough for LA, Alabama and Mississippi.

Mr. GILCHREST. Mr. Chairman, Alaska has a 3-mile jurisdiction, not a 12-mile jurisdiction, and there is only one other situation, that is the State of California, where we have had hearings, and they are managing the Dunegeness crab.

Mr. Chair, I yield 2 minutes to the gentleman from California (Mr. FARR).

Mr. FARR of California. Mr. Chairman, I rise in opposition to this amendment. I think I represent a sense of some fishermen, that represent, and knowledge of the California coastline and essentially West Coast coastlines. This is not good law. This is not a good precedent.

As has been stated, the fish stocks do not respect political boundaries, whether they are near shore waters, offshore waters, State waters or exclusive economic zone.

One of the things that we have been trying to do with our management councils is to develop that kind of uniform practice of how you can best fish a fishery without catching in the process what they call the bycatch, which are also, and when you are fishing for shrimp, you are catching three times as much bycatch as you are fish. That bycatch has an economic value. If you are going to wipe out a species by it as a bycatch, you are going to be wiping out somebody else’s business.

So in the best economic interest, it does not make sense to essentially give States this exclusive jurisdiction at the expense of other fishermen in the ocean. That is why the council of this jurisdiction is opposed to this. The States indicate they do not have the resources to manage it, have the patrol boats and so on.

It really does make sense to keep these jurisdictions as they have. These States have coastal Zone Management Plans. They have exclusive authority that has been granted to them to regulate in certain instances activities in these zones. So there is essentially a local, State, Federal cooperation that has been working well all these years.

The only reason you want to extend this jurisdiction is to take away Federal Government authority and give it to the States, and that might be in the best interest of some commercial interest in that State, but it will not be in the best interest of all the commercial fisheries interests. It will certainly not be in the best interest of sustaining.

Our most important issue in respect here in making laws is to sustain so future generations can have access to these fisheries.

Mr. CALLAHAN. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana (Mr. TAUSIN).

Mr. TAUSIN. Mr. Chairman, let me first tell you that as far as this unfunded mandate, we have discussed personally this issue with our governor, the head of our natural resources in Louisiana. They tell us it is certainly right and fitting that Louisiana and Mississippi and Alabama should have the same jurisdictional enforcement capacities that Texas and Florida have, and they would be very willing to accept that responsibility if the State was accorded that responsibility in this bill. They are prepared for it.

Of course, our fisheries and wildlife department would love to have more money. That is the reason he mentioned that in his letter. But the truth of the matter is that they want parity of jurisdiction, just as much as the fishermen from Louisiana (Mr. LIVINGSTON) and I, who represent Louisiana, would love our State to have parity of jurisdiction.

I appreciate the gentleman from Maryland about the fiscal state of affairs in Louisiana. I assure you, our State officials are one with him in this request.

Secondly, let me point out that the Callahan amendment makes no change substantively in the fisheries laws. The laws are going to be enforced, whether by the Federal authorities or the State authorities, the same.

Thirdly, the gentleman from Louisiana (Mr. LIVINGSTON) made the point, the fact that in Louisiana, Mississippi and Alabama there are 3 leagues. They have enforcement for State authorities, and in Texas and Florida, 3 leagues enforcement authority. Literally, it sets up a crazy boundary line for enforcement.

It does not mean the Coast Guard is not going to be out there. The Coast Guard will still enforce the laws outside the 3 leagues. It will still be there to protect against drug induction into our country. It will still be there protecting our fisheries laws on its side of those 3 leagues.

This amendment simply means that Louisiana and Mississippi and Alabama would enjoy the same enforcement jurisdictional authority that Texas and Florida have in the same Gulf waters.

Finally, let me point out that the Gulf Fisheries Council finds itself in great problems with our own NMFS authority here in Washington. National Marine Fisheries consistently overrules the Gulf Fisheries Council. The Gulf Fisheries Council has great problems with our own authority here in Washington, D.C. But let me assure you of one thing, we in Louisiana are as sincerely interested in
Mr. SAXTON. Mr. Chairman, I rise in opposition to the Callahan amendment. It is my opinion that this amendment would have a devastating effect on many Gulf of Mexico fisheries.

Let me just say, Mr. Chairman, that I have the gentleman from Alabama and for his constituents, I would like to point out that we have heard from some of them who oppose the gentleman's amendment. For example, the Gulf of Mexico Fisheries Management Council voted 9 to 2 to oppose the gentleman's amendment.

I also have a communication here from the Clark Seafood Company from Pascagoula, Mississippi. Let me quote from their letter:

"I think Congressman Callahan was probably trying to do something helpful for commercial and recreational fishing when he wrote" his proposal, "but his proposal, a rider on the appropriation bill, leaves an awful lot of questions unanswered and could cause some big problems for Gulf fishermen."

I also have a letter from the Orange County Fishing Association from Orlando, Florida. They fully support the Gulf of Mexico Fishery Management Council's position in opposition to the Callahan amendment, they say, "The National Marine Fisheries Service states that if they lose the valuable miles for bycatch reduction, then their only alternative would be to lower the allowable catch for red snapper and thereby extend the closure considerably."

We have a letter from the Destin Charter Boat Association to the same effect. We have a letter from the Gulf of Mexico Fishery Management Council Meeting the state of Mississippi's representative stated that they have no intention of requiring bycatch reduction devices in state waters. Last week at the Gulf of Mexico Fishery Management Council Meeting the state of Mississippi's representative stated that they have no intention of requiring bycatch reduction devices in state waters, as did the representative from the State of Alabama.

I think Congressman Callahan was probably trying to do something helpful for commercial and recreational fishing when he wrote his proposal, a rider on the appropriation bill, leaves an awful lot of questions unanswered and could cause some big problems for Gulf fishermen."

Mr. Chairman, I yield the balance of my time to the gentleman from New Jersey (Mr. SAXTON).
close because the shrinking industry is catching and killing millions of pounds of juvenile red snappers as by-catch to their shrimp catch. These juvenile red snappers are inadvertently caught in the Gulf of Mexico. If the Appropriations Bill is passed with this rider, we will be faced with the very real possibility of a recreational red snapper fishery closure this coming season. We urge you to act now to prevent this disaster!

The problem is, the shrinking industry is being allowed to kill a large portion of the snapper population as a useless by-catch that they discard and has no value to them whatsoever, while the red snapper fisheries is having their limits and quota’s reduced to compensate for the juvenile red snappers that the shrimp industry kills.

The Callahan rider will change the state water boundary lines to 9 miles from 3 miles for all Gulf coast states (except FL where it already is 9 miles). This change will allow the shrinking industry to fish in what was once protected federal waters without the required devices designed to save juvenile red snappers as by-catch.

Everything possible must be done to defeat the Callahan rider to H.R. 4276. The future of our multi million dollar recreational, commercial, and charter fishing industry is dependent on it. The red snappers that are being killed and discarded as trash, are the life blood of the red snapper fisheries as well as the commercial and recreational fishing industry.

Your help is needed now.

Sincerely,

MIKE ELLER,
President, D.C.B.A.

GALVESTON PARTY BOATS, INC.
Galveston, TX, July 31, 1998.

Hon. NICHOLAS V. LAMPSON,
U.S. House of Representatives, Washington, DC.

DEAR REPRESENTATIVE LAMPSON, I am writing to ask your help in defeating a rider attached to H.R. 4276. This rider, sponsored by Rep. Callahan will extend the state waters out to nine miles offshore. Newly mandated by-catch reduction devices designed to save juvenile red snapper are not required in state waters, including new areas added as a result of this bill. As such, the National Marine Fisheries Service has stated that extending state waters would require a severe reduction or complete closure of the red snapper fishery in the Gulf of Mexico. As I am sure you already know, our industry is already fighting an uphill battle with the BRD. The last thing we need is the NMFS to be provided with more ammunition to use as justification for reducing our bag limit and season. Please note in the attached letter from Dr. Kemmerer to Mr. Swingle of the Gulf Council, that the NMFS is already pressuring the Gulf Council to reduce our bag limit.

Our industry believes this bill will be voted on this Tuesday, (August 4). Thank you for your time and consideration in this urgent matter.

Sincerely,

ED SCHROEDER.

PANAMA CITY BOATMAN ASSOCIATION

Dear CONGRESSMAN: The Panama City Boatman Association is extremely concerned about a rider to the Appropriations Bill which has been attached by Congressman Callahan from Alabama. This rider will be devastating to the hook and line fishermen in the Gulf of Mexico. If the Appropriations Bill is passed with this rider, we will be faced with the very real possibility of a recreational red snapper fishery closure this coming season. We urge you to act now to prevent this disaster!

The problem is, the shrinking industry is being allowed to kill a large portion of the snapper population as a useless by-catch that they discard and has no value to them whatsoever, while the red snapper fisheries is having their limits and quota’s reduced to compensate for the juvenile red snappers that the shrimp industry kills.

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Sincerely,

MIKE ELLER,
President, D.C.B.A.
Congressional Record — House

August 5, 1998

that it had something to do with oil, which it has nothing to do with oil. So the correcting amendment just delays the effective date until July 1, 1999, and it defines fisheries.

The gentleman from California was very eloquent. But they have a bill in that will be on the floor, probably next week, to extend the boundaries of California. So it is all right for California but it is not all right for Louisiana, Alabama and Mississippi.

Mr. Chairman, I ask that the Members read the amendment and keep in mind that it simply says that the effective date of the legislation is delayed until July 1, 1999, and it defines fish, meaning fin fish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. So read the amendment, and I would urge my colleagues to vote for the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alabama (Mr. CALLAHAN).

The question was taken; and the Chairman announced that the noes appeared to have it.

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

The CHAIRMAN. Pursuant to House Resolution 508, further proceedings on the amendment offered by the gentleman from Alabama (Mr. CALLAHAN) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to House Resolution 508, proceedings will now resume on those amendments on which further proceedings were postponed, in the following order: The amendment offered by the gentleman from Florida (Mr. STEARNS) and the amendment offered by the gentleman from Alabama (Mr. CALLAHAN).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT OFFERED BY MR. STEARNS

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Florida (Mr. STEARNS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment. The Clerk designated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

The vote was taken by electronic device, and there were—ayes 165, noes 261, not voting 8, as follows:

[Roll No. 394]

AYES—165


NOES—261


NOT VOTING—8


Mr. KLINK changed his vote from "aye" to "no."

Mesers of BAKER, ROEMER, GILLESPIE and Mrs. CUBIN changed their votes from "no" to "aye." So the amendment was rejected. The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. GILMAN. Mr. Chairman, on roll call 394, the amendment by the gentlemen from Florida (Mr. STEARNS), I was inadvertently detained. Had I been present, I would have voted "no."

AMENDMENT OFFERED BY MR. CALLAHAN

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Alabama (Mr. CALLAHAN) on which further proceedings were postponed on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment. The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

The vote was taken by electronic device, and there were—ayes 165, noes 261, not voting 8, as follows:

[Roll No. 395]

AYES—165

Mr. CAMP and Mr. FROST changed their vote from "aye" to "no". Mr. SKELTON changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Amendment No. 24 Offered by Mr. Gilchrest
Mr. GILCHREST. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 24 Offered by Mr. Gilchrest Page 62, beginning at line 15, strike section 210.

Mr. CAMP and Mr. FROST, in the order of the House of Tuesday, August 4, 1998, the gentleman from Maryland, Mr. GILCHREST, with the consent of the House, offered an amendment. The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 24 Offered by Mr. Gilchrest Page 62, beginning at line 15, strike section 210.

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boundaries out into the Pacific Ocean. But once again, we were beat 2-1.

There is no sense in taking this body through another debate on the same issue. At the time of the vote, I am not going to ask for a recorded vote and will accept defeat with humility.

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

Mr. GILCHREST. Mr. Chairman, I yield myself such time as I may consume. I want to say also with great humility that the gentleman from Alabama has expressed himself extremely well. This is an issue that we will revisit. I would look forward to working with him and the other gentleman on this amendment in the future very closely.

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

Mr. GILCHREST. I yield to the gentleman from Maryland (Mr. GILCHREST).

Mr. CALLAHAN. Mr. Chairman, I just might remind him that while New York and New Jersey and California were not on our side in the battle that took place in the last century, most of the people from Maryland were. But this year things have changed. I thank the gentleman for yielding.

Mr. GILCHREST. The gentleman from Alabama's words are well spoken. Maryland was a border State. We stayed with the union. But this is not about a fight between the North and South. This is about a battle that all of us take together to sustain the resources of this great country for future generations.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. GILCHREST).

The amendment was agreed to. Mr. ROGERS. Mr. Chairman, I ask unanimous consent that the remainder of the bill on page 124, line 2 be considered as read, printed in the RECORD and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky (Mr. ROGERS)? Mr. MOLLOHAN. I object, Mr. Chairman.

The CHAIRMAN. Objection is heard. The Clerk will read.
The Clerk reads as follows:

PARLIAMENTARY INQUIRY

Mr. MOLLOHAN. Mr. Chairman, parliamentary inquiry.
The CHAIRMAN. Is there objection to the amendment to strike title VIII at this time?

Mr. MOLLOHAN. Reserving the right to object, Mr. Chairman.

The CHAIRMAN. The amendment is to strike title VIII.

Mr. HUTCHINSON. Mr. Chairman, I ask unanimous consent that this amendment be considered.

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

Mr. MCDADE. Reserving the right to object, Mr. Chairman, and I shall not object; I just want to assure that I get the time. There is 20 minutes, I believe, on each side. Each side has an agreement, and I rise in opposition to the gentleman's amendment and request the opportunity to control the 20 minutes.

PARLIAMENTARY INQUIRY

Mr. MOLLOHAN. Mr. Chairman, parliamentary inquiry.
The CHAIRMAN. Is there objection to the amendment to strike title VIII at this time?

Mr. MOLLOHAN. Reserving the right to object, Mr. Chairman.

The CHAIRMAN. The gentleman from West Virginia reserves the right to object and will state his reservation.

Mr. MOLLOHAN. Mr. Chairman, where are we? What are we doing right now?

The CHAIRMAN. The Clerk has just read section 801.

Mr. MOLLOHAN. Mr. Chairman, the gentleman from Michigan (Mr. CONYERS) was standing and was not recognized.

Mr. CONYERS. Mr. Chairman, I believe my amendment was pending at the desk and was preferential, and with the cooperation of my colleague on the Committee and the Judiciary I ask that it be called up.

PARLIAMENTARY INQUIRY

Mr. HUTCHINSON. Parliamentary inquiry, Mr. Chairman.
The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. HUTCHINSON. The parliamentary inquiry is that I have an amendment at the desk, I was recognized, there was a unanimous-consent request that I be allowed to proceed with my amendment, and I ask the Chair to rule on that.

The CHAIRMAN. The gentleman will suspend. The gentleman did ask for unanimous consent to consider an amendment striking all of title VIII that has not been granted at this time. There has been reservations against that at this time.

So the question is: Is there objection to the gentleman considering his amendment at this time?

Mr. MCDADE. Mr. Chairman, I say to my colleagues that when the gentleman from Arkansas made his request, I reserved to claim the 20 minutes in opposition that has been agreed to as the original drafter of the amendment that is in the bill. I would suggest the gentleman from Arkansas be permitted to go forward. It is a straight up-or-down motion on whether or not we should strike the title.

The CHAIRMAN. The Chair just reminds the gentleman from Pennsylvania that the Committee is not at that point yet. At the appropriate time there may be a time limitation.

The Chair might make the recommendation that the gentleman from Arkansas (Mr. HUTCHINSON) wait until the title is considered as read, and he can offer his amendment so that the gentleman from Michigan (Mr. CONYERS), whose amendment would be in order when section 802 is read, can make it. That way we would follow order.

Mr. ROGERS. Mr. Chairman, may I ask what paragraph we are on at this moment?

The CHAIRMAN. The Clerk has read section 801.

Mr. ROGERS. And, Mr. Chairman, if the gentleman from Arkansas (Mr. HUTCHINSON) moves to strike section 801—

Mr. HUTCHINSON. Mr. Chairman, I move to strike section 801.

Mr. ROGERS. Would that be in order, and would that supersede the Conyers amendment?

The CHAIRMAN. The gentleman could withdraw his request and offer another amendment to section 801, in which case it would be in order.

Mr. CONYERS. Reserving the right to object, Mr. Chairman, may I explain to the distinguished chairman and my friend from Pennsylvania that this is a preferential motion? It is a motion, a perfecting motion that takes precedence over a motion to strike, and it is not inconsistent with anything that any of my colleagues are trying to do.

PARLIAMENTARY INQUIRY

Mr. ROGERS. Mr. Chairman, parliamentary inquiry.
The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. ROGERS. If the gentleman from Michigan (Mr. CONYERS) would listen, I think if the gentleman from Arkansas' motion is related to section 801, the Conyers amendment, I think, relates to section 802, if I am not mistaken. If that is correct, Mr. Chairman, would it not be that the Hutchinson motion would come first?

The CHAIRMAN. That is correct.

Mr. CONYERS. Continuing to reserve the right to object, Mr. Chairman, this is not about this bill or anything else.
This is the rules of the House. A preferential, a perfecting, amendment has preference over a motion to strike. This is not just for my colleague's bill or this moment. That is the way the House runs. And to my good friend from Pennsylvania, his right to control time is in no way impeded or blocked by what I am doing. When it comes up, that will still be in order.

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

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

Mr. McDade. Mr. Chairman, I think it works both ways.

Mr. CONyers. No, it is not both ways. This is the rules of the House, and I ask the Chair to give me a little assistance here.

I was on my feet, and we have not approved of the right of my dear friend from Arkansas (Mr. Hutchison) to go forward. I reserve the right to object, and it looks like I am not going to have much alternative.

The CHAIRMAN. The Chair is prepared to try to straighten this out. There was an amendment that is a motion to strike the title which is what the gentleman from Arkansas is preparing to do, and a preferential motion to amend section 802, which the gentleman from Michigan has, could both be pending at the same time, which then would lead the Chair to make a decision.

Mr. COWERS. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Arkansas to strike title VIII?

There was no objection. Without objection, title VIII is considered read.

There was no objection.

The text of title VIII is as follows:

INTRODUCTION

SEC. 802. As used in this title and the amendments made by this title, the term "employee" includes an attorney, investigator, or other employee of the Department of Justice.

SUBTITLE A—ETHICAL STANDARDS FOR FEDERAL PROSECUTORS

ETHICAL STANDARDS FOR FEDERAL PROSECUTORS

SEC. 811. (a) IN GENERAL.—Chapter 31 of title 28, United States Code, is amended by adding at the end the following:

"ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

"Sec. 3308. (a) An attorney for the Government shall be subject to State laws and rules, and local federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

(b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

(c) The Attorney General may designate in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations, as amended, the term "attorney for the Government" includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"3308. Ethical standards for attorneys for the Government."

SUBTITLE B—PUNISHABLE CONDUCT

SEC. 821. (a) VIOLATIONS.—The Attorney General shall establish, by plain rule, that it shall be punishable conduct for any Department of Justice employee to:

1. in the absence of probable cause seek the indictment of any person;

2. fail promptly to release information that would exonerate a person under indictment;

3. intentionally or knowingly misstate evidence;

4. intentionally or knowingly alter evidence; or

5. attempt to influence or color a witness' testimony.

(b) PENALTIES.—The Attorney General shall establish penalties for engaging in conduct described in subsection (a) that shall include:

1. probation;

2. probation;

3. dismissal;

4. referral of ethical charges to the bar; or

5. loss of pension or other retirement benefits.

SEC. 822. (a) WRITTEN STATEMENT.—A person who believes that an employee of the Department of Justice has engaged in conduct described in section 821(a) may submit a written statement, in such form as the Attorney General may require, describing the alleged conduct.

(b) PRELIMINARY INVESTIGATION.—Not later than 30 days after receipt of a written statement submitted under subsection (a), the Attorney General may require a preliminary investigation and determine whether the allegations contained in such written statement warrant further investigation.

(c) INVESTIGATION AND PENALTY.—If the Attorney General determines after conducting a preliminary investigation under subsection (a) that further investigation is warranted, the Attorney General shall conduct a preliminary investigation; or

(d) S UBMISSION OF WRITTEN STATEMENT TO ATTORNEY GENERAL.—If the Attorney General determines after conducting a preliminary investigation under subsection (a) that further investigation is warranted, the Attorney General shall conduct a preliminary investigation.

(e) REVIEW OF ATTORNEY GENERAL DETERMINATIONS.—The Board of determinations made by the Attorney General under sections 821(b) or 822(c).

SEC. 823. (a) E STABLISHMENT. —There is established a MISCONDUCT REVIEW BOARD. If the Attorney General makes no determination pursuant to section 822(b) or imposes no penalty under section 822(c), a person who submitted a written statement under section 822(a) may submit such written statement to the Board.

(b) MEMBERSHIP.—The Board shall consist of—

1. three voting members appointed by the President, one of whom shall be a Republican and one of whom shall be a Democrat; or

2. two non-voting members appointed by the Speaker of the House of Representatives, one of whom shall be a Republican and one of whom shall be a Democrat; or

3. two non-voting members appointed by the Majority Leader of the Senate, one of whom shall be a Republican and one of whom shall be a Democrat.

(c) NON-VOTING MEMBERS SERVE ADVISORY ROLE ONLY.—The non-voting members shall serve on the Board only in an advisory capacity and shall not take part in any decisions of the Board.

SEC. 824. SUBMISSION OF WRITTEN STATEMENT TO BOARD.—If the Attorney General makes no determination pursuant to section 822(b) or imposes no penalty under section 822(c), a person who submitted a written statement under section 822(a) may submit such written statement to the Board.

(e) REVIEW OF ATTORNEY GENERAL DETERMINATIONS.—The Board of determinations made by the Attorney General under sections 821(b) or 822(c).

(f) BOARD INVESTIGATION.—In reviewing a determination with respect to a written statement submitted under subsection (e), or a written statement submitted under subsection (d), the Board may investigate the allegations made in the written statement as the Board considers appropriate.

(g) SUBPOENA POWER.—

(1) IN GENERAL.—The Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Board, and the production of evidence may be required from any place within the United States.

(2) FAILURE TO OBEY A SUBPOENA.—If a person refuses to obey a subpoena issued under paragraph (1), the Board may apply to a United States district court for an order requiring that person to appear before the Board to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as contempt.

(3) SERVICE OF SUBPOENAS.—The subpoenas of the Board shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) SERVICE OF PROCESS.—All process of any character to which the Board may be entitled under paragraph (2) may be served in the judicial district in which the person required to be served resides or may be found.

(5) MEETINGS.—The Board shall meet at the call of the Chairperson or a majority of its voting members. All meetings shall be open to the public. The Board is authorized to sit where the Board considers most convenient given the facts of a particular complaint, but shall give due consideration to conducting its activities in the judicial district where the complaint arises.

(i) DECISIONS.—Decisions of the Board shall be made by majority vote of the voting members.

(j) AUTHORITY TO IMPOSE PENALTY.—After conducting such independent review and investigation as it deems appropriate, the Board by a majority vote of its voting members may impose a penalty, including dismissal, as provided in section 821(b) as it considers appropriate.

(k) COMPENSATION.—

(1) PROHIBITION OF COMPENSATION OF FEDERAL EMPLOYEES.—Members of the Board who are full-time officers or employees of the United States, including Members of Congress, may not receive additional pay, allowances, or benefits by reason of their service on the Board.

(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with
The CHAIRMAN. The Chair advises the gentleman the Committee is under the 5-minute rule, so the gentleman is recognized for 5 minutes on his amendment.

Mr. MCDADE. And how much time am I allowed, may I ask the Chair?

The CHAIRMAN. Does the gentleman stand in opposition?

Mr. MCDADE. I rise in support of the Hutchinson-Barr-Bryant amendment. The distinguished gentleman from Kentucky (Mr. Rogers) has done a masterful job in developing this approach. This title, which our amendment would strike, goes far afield from the ordinary requirements of the spending bill. It includes almost verbatim the well intentioned, but ill advised, Citizen Protection Act. Including that legislation in this bill violates the normal process in this House by bypassing committee hearings and markups, but even more importantly, it is wrong on substance. The proposed title VIII, which is the subject of our amendment, would cut to the heart of our Federal system of justice and would cripple the war on drugs, and for that reason it is understandable that the National Director of Drug Control Policy, Barry McCaffrey, opposes this amendment. Mr. Rogers and I think this legislation should be revised. Despite the Senate's best intentions, it is not well thought out and will do more harm than good.

Mr. MOLLOHAN. Reserving the right to object, Mr. Chairman?

The CHAIRMAN. The gentleman will state his reservation.

Mr. MOLLOHAN. Mr. Chairman, reserving the right to object, there is no time agreement being offered, proposed, on this amendment?

The CHAIRMAN. The gentleman is correct. There is no time agreement at this point.

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

Mr. MOLLOHAN. I yield to the gentleman from Kentucky.

Mr. ROGERS. Mr. Chairman, this gentleman would be amenable to such a request.

Mr. MOLLOHAN. Mr. Chairman, we cannot.

Mr. ROGERS. The gentleman from West Virginia cannot agree to a time?

Mr. MOLLOHAN. We cannot agree to a time.

The CHAIRMAN. Without objection, the title is considered read and the gentleman from Arkansas (Mr. Hutchinson) is recognized for 5 minutes on his motion.

PARLIAMENTARY INQUIRY.

Mr. MCDADE. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. MCDADE. I just need to be clear, Mr. Chairman.

I believe the Chair said to the gentleman from Arkansas that he gets 5 minutes.
I urge my colleagues to support the amendment and not give way to the drug dealers and the defense attorneys, another weapon to use against law enforcement in our vital efforts on the War on Drugs.

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

Mr. HUTCHINSON. I yield to the gentleman from Massachusetts.

Mr. DELAHUNT. Mr. Chairman, I think it is important that, because the gentleman refers to the National Sheriffs Association, the FBI and the DEA, he thinks it is important for the Members to understand that the code of ethics that the gentleman is referring to does not apply to investigatory agents.

Mr. HUTCHINSON. Reclaiming the time, the gentleman is correct that these ethical standards apply to government attorneys, but if we have a State prosecutor who is cross designated to be a special Assistant United States Attorney, then that State prosecutor would be subject to these rules and the Misconduct Review Board bureaucracy that is established under this rule.

So I urge my colleagues to support this amendment.

Mr. MURTHA. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Arkansas (Mr. HUTCHINSON).

Mr. Chairman, I just want the Members of this House to know that I sat beside the gentleman from Pennsylvania (Mr. McDADE), a Member of Congress for 8 years, while he was investigated for 6 years; the most insidious tactics that could possibly have been against him.

The appeals process, which is supposed to make sure that the Federal prosecutors do not get out of control, the Federal appeal process ruled two to one. He went 2 years under indictment. The Federal jury, which came from an area that said 70 percent of the politicians are crooks, ruled in 3 hours. He was acquitted.

Mr. CONYERS. Mr. Chairman, I offer this amendment because we feel so strongly that the gentleman from Pennsylvania (Mr. McDADE) is just an example. What he did for the House of Representatives is absolutely essential to our independent counsel. The prosecutor is a free man to do for the ordinary citizen is absolutely important to their individual protection.

We believe we need an independent body to watch over them, to give them some sort of controls so that they do not go off without control and then be promoted, as somebody was after Waco, and the terrible, terrible injustice they did to the individual in Atlanta with the leaks that came out of the Justice Department.

I just hope that the Members, and we have almost 200 cosponsors of this legislation, we have said to the Justice Department, if you have individual situations that you would like us to look at, we would be glad to look at that. They have not come back with anything they just want to take this out. They want no kind of controls from the outside.

So we believe that it is important to put some kind of controls over the unethical conduct of the Justice Department. As a matter of fact, we have 50 chief justices of the United States that have said that they believe that the Justice Department of the United States should fall under the ethical rules of each of the States.

I feel very strongly about this, and I would urge Members to vote against this amendment. If there is something that has to be adjusted, we are glad to work with them in trying to adjust this when we get to conference.

PERFECTING AMENDMENT OFFERED BY MR. CONYERS.

Mr. CONYERS. Mr. Chairman, I offer a perfecting amendment. The Clerk read as follows:

Perfecting amendment offered by Mr. CONYERS:

Page 116, line 6, strike the period and insert "(including any independent counsel appointed under title 28 of the United States Code and any employees of such independent counsel acting under the authority of the Attorney General)."

Page 116, line 6, strike the period and insert "(including any independent counsel appointed under title 28 of the United States Code and any employees of such independent counsel acting under the authority of the Attorney General)."

Mr. HUTCHINSON. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The gentleman from Arkansas reserves a point of order.

The gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

Mr. CONYERS asked and was given permission to revise and extend remarks.

Mr. CONYERS. Mr. Chairman, I offer this amendment because it goes to the heart of what the McDade provision is designed to do. I want all my friends on the other side of the aisle to understand that this just is an important part of fleshing out the concept that has been brought forward here. In fact, for those who support the McDade amendment, there should not be any trouble supporting this provision that really perfects it.

Now, as we have seen, the present independent counsel perhaps more than anyone else, should be subject to each and every stringent provision that is included in this measure. As a matter of fact, I presume that it is an accident that the measure was drafted so that this was left out. If anybody has any information to the contrary, I would sure like to know about it.

Not only has the present independent counsel demonstrated a number of conflicts of interest in carrying out his duties, the person that he is investigating has been under investigation for almost 5 years, with hundreds of lawyers and investigators, with 17 congressional committees.

Now, there have also been questions about the independent counsel having violated the First Amendment protections, the principles of fairness, and engaged in the use of coercive investigatory techniques. Familiar, Mr. McDADE? Sound familiar with your case? And trampled over important privileges between attorneys and their client. As a matter of fact, going into court saying the attorney-client does not even involve or affect the President or the United States, as well as between the Secret Service.

A great idea. Let us have the President decide whether he wants to have his life protected, or talk about the issues in his job.

For example, the independent counsel to whom I refer has chosen to continue representing clients, the tobacco interests; at one time, if not presently, the National Republican Party. How about knocking out the class action representation interests? He went into the Federal Circuit Court in person to knock out their certification of a class action suit, and guess what? He succeeded. I wonder why?
So he has issued subpoenas to bookstores, “what is she reading?” He subpoenaed a former staff member of mine who now works in the Drug Policy Office, who suggested that maybe Linda Tripp was violating the wiretap laws. He subpoenaed him. Remember that, Bob Wieder?

Well, it goes on and on. The whole problem is that this provision, whether it is struck or kept, should not be examined without us including the independent counsel.

Does anybody have any reasonable objection to that? We want to include all these prosecutors, all these Department of Justice types, but not the independent counsel, the one who is maybe doing more of this than anybody else that we know. He is under four investigations; the court, the Department of Justice, the D.C. Bar, and even he promised to have his own independent counsel office investigate the leaks.

So, in all appropriateness, we ask that this perfecting amendment to my friend from Arkansas’s amendment be included in their consideration.

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

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

Mr. FORD. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in strong opposition to the Hutchinson-Barr-Bryant amendment and rise in strong support of including the Conyers amendment, the Conyers perfecting amendment.

I would say that I bring a bit of personal experience to this as well. I am saddened to have heard what happened to my new friend and my father’s friend over the years, the gentleman from Pennsylvania (Mr. McDade).

The CHAIRMAN. The time of the gentleman from Michigan (Mr. Conyers) has expired.

(By unanimous consent, Mr. Conyers was allowed to proceed for 1 additional minute.)

Mr. CONYERS. Mr. Chairman, I yield to the gentleman from Tennessee (Mr. Ford).

Mr. FORD. As a matter of fact, my father was indicted some several years back by one of the prosecutors working with counsel Starr, Hickman Ewing. After 5 years of investigating, several years, one trial, a second trial, abuse by the Department, trampling the rights of an individual, another Member of Congress, I cannot tell you the pain that it exacted on my family and my father personally.

Fortunately and blessedly, we were able to survive. But plentiful and often times it seemed exhausting resources of the Federal Government, for prosecutors not to be reined in, not to have to comply with some sense of ethical conduct. Mr. Chairman, I submit to you it is American. I submit to my friends on the other side, no matter how noble their wanting to strike this provision might be, we have American rights, we have American liberties.

And whether or not they choose to agree with the person’s politics, whether it is on President Clinton’s part with Ken Starr, whether it is a Republican that disagrees with a Republican or a Democrat with a Republican, it is unfair to trample people’s lives.

Mr. CONYERS. Mr. Chairman, reclaiming my time, I hope the sponsors of this amendment will not object to this provision.

POINT OF ORDER

The CHAIRMAN. The gentleman from Arkansas (Mr. Hutchinson) is recognized on his point of order.

Mr. HUTCHINSON. Mr. Chairman, my point of order goes to the fact that the gentleman’s perfecting amendment that he is offering is not a proper perfecting amendment because it expands the scope of the provision in question to add legislative language not covered in title VIII of the bill before us. It is not a perfecting amendment, a proper perfecting amendment, because it opens up new legislative language not covered already, and 28 U.S.C. Section 581, which is the independent counsel law, and that is not covered under title VIII of the existing bill. Therefore, it is not a proper perfecting amendment.

The CHAIRMAN. Do other Members wish to speak on the point of order?

Mr. CONYERS. Mr. Chairman, this should not be too difficult. The amendment should be made in order because it reiterates that the independent counsel is included in the group of individuals covered under the McDade amendment, specifying that the definition of employee or other attorney acting under the authority of the Attorney General should include the independent counsel.

House rule XIX(2)(c) provides that, “No amendment to a general appropriation shall be in order changing the existing law.” This amendment does not change existing law; it is a perfecting amendment.

My amendment does not create additional legislation nor does it extend the range of the term “employee” in the amendment. It simply reiterates the fact that under the current law, the independent counsel under Section 28 of the U.S. Code is appropriate.

There are several supporting sources in current law supporting the clarification, 28 U.S.C. 594(a), 28 U.S.C. 596(a), and the Supreme Court decision in Morrison v. Olsen. We have all kinds of cases that I presume that the distinguished chairman and his able Parliamentarian have found.

I urge that this perfecting amendment be considered in order.

The CHAIRMAN. The gentleman from Georgia (Mr. Barr) is recognized.

Mr. BARR of Georgia. I do, Mr. Chairman. The CHAIRMAN. The gentleman from Georgia (Mr. Barr) is recognized. Mr. BARR of Georgia. Mr. Chairman, this is almost as bizarre as the words we heard earlier in opposition to the Hutchinson-Barr-Bryant amendment.

What we are witnessing here, under the guise of the usual flowery language emanating forth from proponents of this latest foray, is really precisely what they purport to argue against; and that is, a backdoor effort to do something that they do not often have the chance to do.

Mr. McDADE. Mr. Chairman, the gentleman is not addressing a point of order, Mr. Chairman. I demand regular order.

The CHAIRMAN. In the opinion of the Chair, the gentleman is addressing the point of order.

Mr. BARR of Georgia. Mr. Chairman, what this amendment purports to do is to amend the independent counsel statute to make a political point about the independent counsel statute not allowable under the rules of the House as an amendment to an appropriations bill. It purports, therefore, to legislate substantively, and the gentleman from Illinois make this very clear. He is launching a political attack on the statutory authority of the independent counsel, something which is not the subject matter of this appropriation bill, but in a way that goes far beyond the language and subject matter of the underlying amendment itself.

The CHAIRMAN. The gentleman from Tennessee will suspend.

Do other Members wish to be heard on the point of order?

PARLIAMENTARY INQUIRY

Mr. ROHRABACHER. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state the parliamentary inquiry.

Mr. ROHRABACHER. Mr. Chairman, I have a point of information.

Under the 5-minute rule, Mr. Chairman, do we have 5 minutes that we can talk on this situation, as well as on the underlying bill or underlying amendment that is before us?

We have an amendment to an amendment, now. The 5-minute rule, does the House chair have the power to ask for the 5 minutes? Can the Conyers proposal to Hutchinson-Barr-Bryant amendment. Then, and then go on as well to speak 5 minutes on Hutchinson?

The CHAIRMAN. The Chair would remind the gentleman that we are discussing the pending point of order by the gentleman from Arkansas (Mr. Hutchinson). As such, it is disposed of, we will be under the 5-minute rule, in which any Member can stand and debate the underlying issue.

The Chair will inquire further, is there any Member who wishes to speak on the point of order?

Mr. WATT of North Carolina. Mr. Chairman, I wish to be heard on the point of order.
The CHAIRMAN. The Chair recognizes the gentleman from North Carolina (Mr. Watt).

Mr. Watt of North Carolina. Mr. Chairman, I think that the underlying legislation legislating on an appropriations bill is inappropriate. I am opposed to the underlying legislation. But if the underlying legislation on an appropriations bill is appropriate, then so would the amendment be appropriate. We cannot say we are going to waive the underlying legislation on an appropriations bill, and then say or make a point of order that an amendment to that legislation is non-germane. That is the perspective I bring.

Mr. Chairman, I would join other Members who would say that the underlying legislation itself should not be on this bill. But if the underlying legislation should be on the bill, then this amendment ought to be allowed to be on the bill, and ought to be found to be germane.

The CHAIRMAN. Are there other Members who wish to be heard on the point of order?

Mr. Meehan. Mr. Chairman, I wish to be heard.

The CHAIRMAN. The gentleman from Massachusetts (Mr. Meehan) is recognized to speak on the point of order.

Mr. Meehan. Mr. Chairman, this bill applies to all Department of Justice employees, or those who are acting under the Department of Justice authority. In this instance, the independent counsel bill.

We all know when the independent counsel seeks to expand his jurisdiction, who does he go to see? He goes in to see the Attorney General and he expands his jurisdiction. When he needs to get his budget squared away, when he needs additional resources, who did he go to see? He goes in to see the Department of Justice and talks to the employees. That is why this amendment is in order.

Let me just, for the purposes of people on the other side of the aisle, provide some supporting sources in current law to support this clarification.

Mr. Chairman, 28 U.S.C. 594(a) provides that an independent counsel appointed under this chapter shall have full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, or both, other officer or employee of the Department of Justice.

Or let us take 28 U.S.C. 596, Section A. It provides that an independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, by whom? By only the personal action of the Attorney General of the United States.

Or let us look at Section 3, the Supreme Court, in Morrison versus Olson, at 487 U.S. 654. It held that an independent counsel is subject to removal by the Attorney General.

Or let us look at the appeals court in the D.C. Circuit, a case holding that the independent counsel is generally covered by rule XVI(e) of the Federal Rules of Criminal Procedure.

So under the independent counsel statute there is little doubt, Mr. Chairman, that this is covered under the statute, and so it is subject to be offered at this time and at this place.

The CHAIRMAN. Are there further Members who wish to be heard on the point of order?

Ms. Waters. Mr. Chairman, I rise to the point of order. I would like to reiterate the point that was made by the gentleman from North Carolina (Mr. Watt). We cannot in fact have an underlying piece of legislation that is in order that is legislating on an appropriation, and then even discuss the possibility of that legislation being out of order because it is legislating on an appropriation and it does not fit, for any reason.

I think it is important that this debate not be stymied by any attempt to anticipate discussion of other major issues of the most important debates we will have in this House. It is not just about the basic questions that are being raised in the underlying legislation. The amendment that is being offered by the gentleman from Michigan (Mr. Cooper), fits so well in this discussion.

We are watching unfold before our very eyes a violation of the Constitution of the United States of America. If there is one thing I cherish, it is my privacy. We cannot have a special prosecutor who will go to a bookstore and demand to know what books someone purchased in America. That is unacceptable.

But there are other questions that are being raised as it relates to the special prosecutor that deal with the violation of the Constitution of the United States, not only the violation of privacy that I just alluded to. We have questions of wiretap and wiretapping. We are looking at a whole new debate about attorney-client privileges. This is too important to be sidetracked by someone who does not want to hear it because they have got another agenda.

Mr. Chairman, there should be no question that this is in order. I hope we do not have to wait until the chairman will even have to rule on this. I do not want this body divided on a partisan basis on this issue.

This is not about partisan politics at this moment. This is about the Constitution of the United States of America, and whether or not citizens are going to have basic protections that we thought were guaranteed to us by the Constitution.

So whether we are talking about the special prosecutor or whether we are talking about the underlying legislation, what we are talking about is individuals who have run wild, who are trampling on our rights, who have gone absolutely too far. It does not matter whether they are from the right or they are from the left, or where they live in this country, what color they are.

The fact of the matter is that we have violations of the Constitution being perpetrated on us by those who work in the Justice Department, and it is off the scale when we look at this special prosecutor. He has gone too far. This should be ruled in order.

The CHAIRMAN. Are there further Members who wish to be heard on this?

Mr. Rohrabacher. Mr. Chairman, I wish to speak on the point of order.

The CHAIRMAN. The gentleman from California (Mr. Rohrabacher) is recognized.

Mr. Rohrabacher. Mr. Chairman, let me just say, and I understand the passion, I have a little passion myself when I get up and have these discussions, but I think the underlying arguments that the gentleman just made are correct. If this is in the appropriations bill, there should be an amendment that is permitted. If we are concerned about the abuse of power of prosecutors, we have to be concerned about the abuse of power of special prosecutors.

The CHAIRMAN. The Chair is prepared to rule.

The gentleman from Arkansas (Mr. Hutchinson) makes a point of order that the amendment offered by the gentleman from Michigan (Mr. Conyers) is legislation in violation of clause 2 of rule XXI.

The gentleman from Michigan seeks to amend certain legislative language permitted to remain in the bill. The relevant provision defines the term “employee” as used in title 8 of the bill. The provision would denote the term “employee” to include an attorney, investigator, or other employee of the Department of Justice, and an attorney or investigator or accountant acting under the authority of the Department of Justice.

The amendment offered by the gentleman from Michigan seeks to particularize that the term “employee” also includes any independent counsel appointed under title 28 of the United States Code and any employees of such independent counsel who are under the authority of the Department of Justice.

The amendment does not propose a change in title 28. Rather, it identifies one particular category of official as included in the classes of officials covered by the legislative language already in the bill.

As recorded on page 663 of the House Rules and Manual, where legislative language is permitted to remain in a general appropriation bill, a germane amendment merely perfecting that language and not adding further legislation is in order, but an amendment effectuating further legislation is not in order.

In the opinion of the Chair, the amendment offered by the gentleman...
from Michigan (Mr. Conyers) merely perfects the legislative language permitted to remain in the bill, and refrains from adding further legislation. Accordingly, the point of order is overruled.

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

Mr. Chairman, I want to compliment my two colleagues, the gentlemen from Pennsylvania, Mr. McDade and Mr. Murtha, for coming before the Congress in a time of fashion and raising a question that is very important. I want to say to my colleagues on both sides of the aisle, this is not a political issue. This is an issue of fundamental fairness.

I occupy the District immediately south of the gentleman from Pennsylvania (Mr. Joe McDade). Members cannot imagine what this government and the American people know this, is destroying respect for the American judicial system, all with the idea that every now and then some prosecutor who wears a pearl handled 45 revolver can find with a grudge against an elected official, Republican or Democrat, who can make a point to bring a charge, and substantiate that charge by just marginal testimony, sufficient to get an indictment, but not sufficient to convict.

But you can take that public official down the road to ruination, that family down the road to ruination, our system down the road to ruination. Why? Why do we sit here? Why are we so innocent? Why have we not recognized that this has been happening over and over again? Why are we asking for the McDade-Murtha language? It was an understanding in the bar and in the prosecutorial field and in the defense field that there were certain standards of ethics and honor, certain things you did not do, an unwritten code. Well, the prosecutors in the United States today, whether they be special counsels or regular prosecutors, have shown us that they are going to push it to the end of the envelope and beyond. They are going to write their own definition of what standards are.

So it is incumbent upon this House, the people’s House, to determine that if you are going to push it to the edge of the envelope and you are going to destroy lives and you are going to prosecute people unreasonably at high expense and at a detriment to both, the family and this democracy, then this public House should take action.

We are say to codify the code of standards. We want to say what they have to do and what they do not have to do, and we want to make them subject to a review board. Why should not public officials and all Americans know that when they get taken by the Department of Justice, thousands of FBI agents, that they have a right not to be ruined. That is what the McDade-Murtha language and the perfecting amendment of the gentleman from Michigan is going to accomplish.

I urge my colleagues to vote for justice.

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

I have the greatest respect for the gentleman from Pennsylvania (Mr. McDade) and the gentleman from Pennsylvania (Mr. Murtha) and the cause that they are out here about today.

I happen to have counseled the gentleman from Michigan (Mr. Conyers) back when he had the problems that I know he did, which I think were wrong. I believe he was taken through hell, and I think it was a very improper methodology being used by that prosecutor from all I knew about it at the time, and at great deal.

But, unfortunately, I cannot agree with the proposal that is in the bill today and that is being amended or attempting to be amended by the gentleman from Michigan (Mr. Conyers). I cannot support the Hutchinson amendment to strike all of this and urge that all of it be taken out of this bill, because I do not think we can simply go to conference and perfect something that is as bad, unfortunately, as the way this is crafted.

I would hope that we could come back at some point as a body, through the Committee on the Judiciary or otherwise, and craft something that would address the problems that I think are very real. I think the Members from Pennsylvania, in particular, of both parties have brought to our attention today and so forcefully and rightfully.

But what the underlying provision that we are talking about striking would be the potential for permitting anybody who has some prosecutor who goes after them to complain to the Attorney General, and the Attorney General is going to have to respond with as little a standard as bringing discredit to the Department in 30 days. That could cause untold delays in hundreds and thousands of prosecutions across the country.

It is an enormous cost in bureaucracy that we would be setting up in the process of doing this. Then if you did not agree, of course, with the result of what the Attorney General decided in 30 days, you would have a 7-member board that has been created, that sits in essence outside of the body politic of the Justice Department and that reviews the questions that may be raised by somebody who might be the subject of indictment or prosecution.

It is not that you may be should not have some review in very limited circumstances, but they are not defined well in the proposal, unfortunately, not very narrow at all. The most dangerous provision, from my perspective as the chairman of the Subcommittee on Crime in the House, is the fact that information could be shared with this board from anywhere in the government, including criminal investigation files, information about informants and potential witnesses, classified documents, or information covered by the Privacy Act. And things that are related to the information that would be required could be revealed in public, since apparently the board operates in public.

There is nothing in this provision that would prohibit the information that I just described from becoming public.

Indeed the difficulties that exist with this provision are myriad. I hope that today this debate on the amendment of
the gentleman from Michigan (Mr. CONYERS) does not deteriorate into a
debate over a question about a special
prosecutor. We can debate that until
the cows come home. That is a highly
political debate.

Observe, if you are going to cover
prosecutors, you should be covering
probably all prosecutors, but we should
not be debating the merits or the pros
and cons of the independent counsel
out here today. We should be debating
the merits and the pros and cons of the
underlying matter here today, that
everything would be covered by this, all
prosecutors, in essence, in a fashion that is un-
workable and unmanageable and im-
possible to cope with as a practical
matter.

So I strongly urge the Members, how-
ever passionate you may be, and I am
passionate about my good friend, the
gentleman from Pennsylvania (Mr. 
MCDADE) and about the improprieties
that do go on from time to time with overzealous prosecutors who are out of
control in our system, I do not believe
that the underlying matter here today,
the part that is in the bill today that
we are trying to strike, is the solution.
It is not the solution. Unfortunately, it
makes things more difficult than it
cures.

In the strongest of terms, I urge
Members' deliberate consideration of
this, and I would urge Members ulti-
mately, after dispensing with the Con-
yers amendment, to vote to strike, to
support the efforts of the gentleman
from Arkansas (Mr. HUTCHINSON) to do
that.

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

Mr. MCCOLLUM. I yield to the gen-
tleman from Michigan.

Mr. CONYERS. Mr. Chairman, I
thank the gentleman for his presenta-
tion. Right now we are debating this
small provision, not the whole thrust
of the measure. Do you not agree with
me that there have been more than suf-
ficient leaks under the independent
counsel to include him in this meas-
ure?

Mr. MCCOLLUM. I do not believe the
debate should be on the question of
what is going on with the special pros-
secutor or with what is going on with
the Clinton investigation or any of
that. The focus of this debate today,
you are distracting by your amend-
ment, you are distracting by your amend-
ment, it is going to get at Ken Starr. I think that is wrong.

The issue underlying this today is
not that question, however volatile
that is. That will be dealt with in due
course by the Committee on the Judi-
copy, if Ken Starr sends anything up
here or when we debate independent
counsel. But what we are debating
today, and should be, is that the under-
lying premise you are trying to amend
is fatally flawed.

The so-called structure that the gen-
tleman from Pennsylvania (Mr. 
MCDADE) and the gentleman from
Pennsylvania (Mr. MURTHA) have
worked into this bill unfortunately will
not work, even though we want to have
oversight. It will not operate correctly.
It cannot operate, and I urge in the end
that it be stricken.

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

I think it is time to put a human face
on the abuses that are carried out by
prosecutors in this country, prosecu-
tors who consistently violate the
rights of innocent human beings, inno-
cent citizens and their families, friends
and relatives.

By putting a human face on it, I
would like to refer to a predecessor
that I had here in the Congress, Angelo
Roncallo, a man who a number of years
ago sat in the very seat that I occupy
today. And what went on in his case
has happened in so many other cases
over the years.

He was a man who was brought in by
the United States Attorney and told he
had to deliver a political leader. When
he refused to do that, he was called be-
fore the grand jury, his family was
harassed. He was indicted. His friends
were indicted. Everything was leaked
to the newspapers. This man's career
was destroyed. He was defeated here in the
United States Congress.

Finally his case went to trial. The
jury was out 30 minutes and he was ac-
quitted. It came out during that case
that all throughout, from day one, the
prosecutors had evidence that would
have completely exonerated this de-
fendant. They knew it from day one.
Throughout the trial, they had U.S.
Marshals stand around the U.S. Attor-
ney's office because they had convinced
the judge that this Congressman, An-
gelo Roncallo, was somehow going to
have him killed during the trial. The
jury had to witness this, marshals in
the courtroom day in and day out.

When the trial was over the judge
said it was a disgrace. He referred it
to the Justice Department to have it in-
vestigated. What was done? Nothing.
That is what always happens.

The gentleman from Georgia said it
is bizarre. He said that opposition to
the Hutchinson amendment is bizarre.
He said the comments of the gentleman
today (Mr. MURTHA) were bizarre. I would say to the gentleman
from Georgia, if he were targeted by a
prosecutor, if they tried to destroy his
reputation, he would find that bizarre.
I think it is important for all of us in
this Chamber, those of us who are self-
righteous, those of us who say it could
never happen to us, let you be the tar-
get of an unscrupulous prosecutor, and
you will see how fast you will change
your tune when you see your wife har-
assed and your children threatened, who
can go on and on with case after case. I
remember I was once negotiating with the
United States Attorney in a case and he
ended the discussion, ended the

negotiation by telling me that he was the
United States of America, it was time
that I realized it.

The fact is, no prosecutor in this
country is the United States of Amer-
ica. The United States of America is
dedicated to the people. It is time for us to stand up and say no to
these prosecutors, no matter where
they are coming from.

Prosecutors are out of control. They
are ruining the civil liberties of people
in this country. I am a Republican. I
cannot understand how Members in my
party who say they support individual
civil liberties could ever allow a prosecutor to
cruise upon the rights of innocent
people, the abuses that they are guilty of

And I just want to concur in what the
gentleman from Pennsylvania (Mr. 
MURTHA) said. I do not know how the
gentleman from Pennsylvania (Mr. 
MCDADE) went through what he went
through over the years and stood tall
against them. He is a man who had the guts to stand
up. But you think of the average citi-
zen in your home town, if they went
after him, would he have that same
guts? Would he have that stamina?
Would his family be able to resist it?

I again urge and implore all of my
colleagues to defeat the Hutchinson
amendment, stand with the gentleman
from Pennsylvania (Mr. MCDADE),
stand with the Constitution and say no
to this untrammeled abuse of power by
the prosecutors and our Justice De-
partment today.

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

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

Mr. MCDALLE. I yield to the gen-
tleman from Michigan.

Mr. CONYERS. Mr. Chairman, I
just want to respond to my dear friend, the
Chairman of the Subcommittee on Crime, the gentleman from Florida
(Mr. MCCOLLUM).

My amendment is not about Kenneth
Starr and his investigations. It is about
whether or not the office of spe-
cial prosecutor, who is employed by the
Department of Justice, is considered to
be an employee. The answer is per-
fectly obvious. I can only gather that
may have been a mistake that it was
not included in here. We are going to be investigated.

There is plenty of time for him. But
this is to include this in the provision
of the McDade measure.

I thank the gentleman for yielding to
me.

Mr. STUPAK. Mr. Chairman, I rise in
support of this amendment, the Con-
yers amendment. Whether we agree or
not with the underlying provision of the
bill, the Murtha amendment, I do
believe and I do not see any reason why
we should exclude any branch of the
Justice Department or any employee.

What the Murtha-McDade language es-
tablishes is an ethical standard for
Federal prosecutors.
If we take a look at the independent prosecutor right now, we have given the individual unfettered subpoena power and about $40 million.

What does the Murtha-McCain language say? It says prosecutors and employees of the Justice Department shall not seek indictment of any person without probable cause. It says that they shall not fail to promptly release information that would exonerate a person under indictment, intentionally mislead a court regarding the guilt of a person, intentionally or knowingly misstate or alter evidence, I know that has never happened in the current investigation, attempt to influence a witness' testimony, frustrate or impede the defendant's right to discover evidence, offer or provide sexual activities to any government witness, leak or improperly disseminate information during an investigation, or engage in conduct that discredits the Justice Department. If that does not sound like what we are doing, then we are in the special investigation, this special prosecutor, and what has happened on the McDade case and some of these other cases, that is why we need this provision.

This is not a political debate. This is what happens in prosecutions. That is why the McDade and Murtha language has come before us. So what the Conyers amendment says is that the independent counsel exercise their authority on behalf of the Attorney General and the Department of Justice, and that we must ensure that all prosecutors are held to the same standard no matter who they are investigating, whether it is the President or the person on the street.

We cannot create a special class of Federal prosecutors. That is what we do if we defeat this amendment. This perfecting amendment needs to be passed. We cannot create a special class of Federal prosecutors that is not subject to the Department of Justice ethical standards.

I urge all Members to support the Conyers amendment and rein in the prosecutors across the United States and especially the independent, so-called special prosecutors.

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

Mr. Chairman, let us just kind of sit back for just a moment here, now that we have at least gotten some of the other Members that think that if you talk loud enough and bang on the lectern and talk fast enough you will get applause and that really means something. Let us alternatively focus on exactly what is going on here.

All of the points that the gentleman just made, and he has extensive background in law enforcement and I respect that, all of those things are already encompassed in both the internal rules and the procedures of the Department of Justice. They are already encompassed indirectly and directly in those rules that pertain to every lawyer in the U.S. Attorney's office who has to be a member of the bar of the jurisdiction in which that office is located.

If there are, in fact, problems from time to time with prosecutors, as there will be with any profession, then there are already very clear, very well time-tested mechanisms, including prosecution of a prosecutor for violation of civil rights violations of Federal law, ethical proceedings, disbarment proceedings that can be brought against that assistant U.S. attorney or that government attorney or that United States attorney, if need be.

The problem with the underlying language, and I am not even going to bother talking about the amendment to the amendment so much. We know what that is. That is an anti-Ken Starr amendment. The problem is the mechanism that the underlying language in title VIII, which we seek to remove, purports to do. It will, make no mistake about it, wreak havoc on very important prosecutions. I am somewhat amused. We sit in the Committee on the Judiciary frequently, and if we ever find an example of how a law has been abused or why a law is necessary, many of those same folks, including the distinguished gentleman who offers the amendment to the amendment, immediately say, oh, well, you are trying to use by example; oh, what we are talking about are just examples of something: show us the law. Well, of course, now what they are doing is they are raising one example and they are saying we have to throw the baby out with the bath water.

There are mechanisms already in place to address prosecutorial abuse and prosecutorial misconduct. Those mechanisms are used day in and day out whenever there is substantial evidence of abuse. Defense attorneys file motions in limine and motions in evidence. There are mechanisms to protect against abuse. Let us not throw the baby out with the bath water. There are mechanisms to protect against abuse. Let us sustain and protect those mechanisms.

As a constitutional lawyer, I have always been a supporter of constitutional accountability. And in 1995, when the Republicans took control of Congress, one of our first orders of business was to make this institution accountable by the same ethics rules as all other attorneys. These attorneys should be held accountable to the same standards set by the State Supreme Court that granted each lawyer his or her license to practice law in that State.

As most of my colleagues know, I have always been a supporter of congressional accountability. And in 1995, when the Republicans took control of Congress, one of our first orders of business was to make this institution accountable by the same laws we make for everybody else. Well, my colleagues, we are facing the same issue of accountability here.

Our Founding Fathers wisely rejected the notion of kings and dictators and, instead, they formed this experimental government called a democracy. Well, in our system of government no one is above the law. No civil servant, no law enforcement official, no Congressman, not even the President of the United States is above the law in our country. But over the past decade, the Department of Justice has made every attempt to exempt its own attorneys from the ethical rules of the States granting them their licenses. Should the Department of Justice be above the State laws of ethics? I do not see any reason why they should.

Time and time again it has come to my attention that Department of Justice lawyers have conducted themselves in a questionable manner while representing the Federal Government without any penalty or oversight. What happened to our good friend and colleague, the gentleman from Pennsylvania, Mr. Joe McCauley, could happen to any citizen in this country, and they should not have possibly the courage or the resources that the gentleman from Pennsylvania did to fight it and win.
I listened to the debate, and I think we have got to step back and reflect. This is really rather simple. It is about ethics. That is what it is about. It is about ethics, and the existing code of ethics that every single state prosecutor subscribes to ought to be applied to Department of Justice attorneys. I do not think that is asking too much. We have heard a lot about law enforcement concerns, but that should not justify the creation of a lesser standard of ethics for Federal prosecutors. It just does not work. We should pause and think about the power of the prosecutor, and I know that power. I was an elected prosecutor for more than 20 years. I understand that power. I know what it can do to individuals. I know what it can do to families, and it should be exercised judiciously. I submit that most prosecutors, Federal and State, do that.

There is no power greater in a democracy where you have the capacity to take the individual away from an individual. That is the ultimate power, and if that power is abused, it begins the process of the erosion of a healthy democracy.

I dare say the prosecutor should be held to the highest possible standards, the highest code of ethics, because the American people have given them an extraordinary power, whether they are independent counsels, whether they are State prosecutors, whether they are United States Attorneys.

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

Mr. Chairman, all of the legal arguments have been stated quite coherently and cogently by members of the Committee and even by those who have been challenged by Members on the other side of the aisle. I would side with those who support the McCade-Murtha provision and certainly even side with the ranking member on the Committee, who is sitting on the left side of the speaker's desk, the gentleman from Michigan (Mr. CONYERS), in his efforts to perfect the provision.

I would say in addition to all that has been said, and not to be redundant, not to be repetitive, all that has been said by those who spoke so eloquently, including my dear friends the gentleman from New York (Mr. KING) and the gentleman from Pennsylvania (Mr. KANJORSKI), that we are also faced with a public relations challenge as well.

One of the reasons that so many around this Nation distrust and mistrust politicians, the gentleman from Pennsylvania (Mr. MURTHA) spoke about the district in which the jurors were picked in the trial of the gentleman from Pennsylvania (Mr. MCDADE), where 70 percent of those in that area thought that we were all crooks or thought that politicians were crooks, when you look at a Justice Department that is allowed to really run amuck, to trample the rights of individuals, to trample the civil liberties of individuals all in the quest for a conviction, all in the quest for fulfilling an agenda that they really personally believe, and that they personally believe that this person or group of persons might be guilty of a crime, which sometimes might be the case, all we are asking for, Mr. Chairman, and I say to my friends who are sponsoring this amendment and those who I have a personal relationship with who are sponsoring the striking of this provision, is that our prosecutors have to behave and have to follow a certain set of ethical standards.

There is nothing unusual, nothing bizarre, nothing un-American, about what is being asked, for all that we are asking for prosecutors, Federal and State, around this Nation to do is follow a set of standards, the highest set of standards.

My dear friend, the gentleman from Massachusetts (Mr. DELAHUNT), a former prosecutor and a dear freshman colleague, I think stated it perhaps best. There is no greater power in this democracy than the power that our prosecutors in this great America have; for they deserve it but they should also be checked and it also should be tempered.

Reform of our justice system, civil and criminal, is a top priority of this Congress. The low reputation of the legal profession is of greatest concern to ethical lawyers. I rise in support of America’s prosecutors, the overwhelming percentage of whom already follow the rules written out in this legislation. In fact, I dare say virtually all of them do every day.

Citizens need to understand that they have a legal right to have these rules followed, and that is the purpose of the legislation today.

Reputable lawyers know better than anyone else that all too often the courts today are too slow; that all too often justice is delayed or, because of delay, denied; all too often the justice system does not ultimately deliver what all of us intend it to deliver.

Because I have so much faith in America’s prosecutors, because I want
to support our criminal justice system, I want the American people to support that justice system as well. I want everybody to understand that when they go to court and they are accused of a crime or their family member is accused, they have a right to have a victim and the perpetrator of that crime accused that justice will be done and that it will be fair and on the level.

There are 10 commandments in this bill. The 10 commandments are already observed by good prosecutors everywhere and certainly by good prosecutors in our Department of Justice and those who work in the Offices of Independent Counsels appointed pursuant to statute.

Let me just read these 10 commandments, because it is so self-evident we must stand in support of them.

Commandment number one, just reading from the 10 provisions of the McDade-Murtha bill, says: Thou shalt not indict without probable cause. Who here today says it should be otherwise? Of course, this is a rule that must bind prosecutors throughout the Government.

Number two: Prosecutors cannot hide information that would exonerate a person who has been indicted. They cannot hide information that would exonerate someone who might not be guilty of the crime with which they have been charged. That is a rule that good prosecutors already live by.

A prosecutor must not intentionally mislead a court as to the guilt of the accused. Of course he or she must not do that.

A prosecutor must not intentionally or knowingly alter evidence or intentionally or knowingly misstate evidence.

Number six: A prosecutor must not try to color a witness’ testimony.

Number seven: A prosecutor must not prevent a defendant from obtaining evidence that he or she is entitled to.

Number eight: A prosecutor must not offer or provide sex as an inducement to any government witness or potential witness.

Number nine: The prosecutor should not leak information improperly during the course of an investigation.

We all know about the importance of grand jury secrecy to the ultimate successful prosecution, because if witnesses are tipped off in advance they cannot convict the guilty.

And number 10: Prosecutors should not engage in conduct that discredits the Department of Justice.

These 10 commandments in this legislation are not controversial. They are not controversial if applied to any prosecutors in the Department of Justice or within the office of any independent counsel. Every lawyer, certainly every Government lawyer should follow these rules.

I urge colleagues to vote yes on the amendment offered by the former Chairman the gentleman from Michigan (Mr. Conyers).

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

Mr. Chairman, this debate is long overdue. It is about time we dealt with what is wrong with the Justice Department and with unethical prosecutors in this Nation.

Legislators at the state level, at the federal level have been absolutely supportive of the criminal justice system. They have done everything to give law enforcement the ability to apprehend criminals. They have done everything to be supportive of the Justice Department.

When we look at the generosity of public policy makers on wire tapping, no-knock, search and seizure, all of that, when we look at mandatory minimums, three-strikes-and-you-are-out conspiracy laws, we have been very generous, sending a message to the people of this Nation, we want criminals locked up.

We never knew that they would take the generosity of good public policy makers and turn it on its head. We never knew that they would take out innocent people in so many different ways.

I cannot even get into telling my colleagues how they use conspiracy laws. No evidence, no documentation. These conspiracy laws are filling up the prisons.

I do not know all of the details of the case of the gentleman from Pennsylvania (Mr. McDade). I have heard about it. But I want to tell my colleagues, I know thousands of Mr. McDades who do not have any money, who do not have any attorneys, whose grandparents and mothers come crying to my office for me to help them and I cannot do anything because my powerful government, prosecutors, have run amuck.

Let me tell my colleagues, my hat is off, my hat is off to the ranking member of the Committee on the Judiciary, my friend from Detroit, Michigan, for this amendment.

But I want to tell my colleagues, I want to make it very clear, he is talking about a generic prosecutor. I am talking about generic prosecutors, but I am talking about Ken Starr also. I want to tell my colleagues, he is under investigation because he has leaks about Hillary Clinton getting indicted, leaks about Bruce Lindsey getting indicted, leaks about Monica Lewinsky meeting with Ken Starr in New York City, leaks about Betty Currie’s testimony, leaks about FBI wire conversations at the Ritz Carlton hotel. Even the Republicans have said he should be investigated.

So let me make it clear. We would not be here today today, if this poster boy for unethical prosecutors had not violated all of us in the way he has done.

I am so glad this debate is taking place. I wish we had this in our subcommittee. It should be in full committee. We should bring people in here to tell their stories about what has happened to them.

I should be able to tell my colleagues about a young woman named Kimber Smith, who is 19 years old who is sitting in a federal penitentiary today.

And so I do not know all of the details about the gentleman from Pennsylvania (Mr. McDade). I have heard some. But I want to tell my colleagues, indeed, I know many because I have heard the stories and I have seen the devastation of unethical prosecutors.

It is time for America to believe that even though we want criminals prosecuted, indicted and locked up, we do not intend for them to be violated and run over and disrespected by anybody’s prosecutor.

I want to tell my colleagues something. No matter what they think about the gentlewoman from California (Ms. Waters) on the left or somebody on the right, there is one thing that I hold dear. That was drummed in my head as a student, and that was the Constitution of the United States of America.

I was made to believe that I would be protected. Even when things were going wrong, there would be some hope because we had a system of justice that made sure that the average person, in the final analysis, would have an opportunity for redress. And I believe in this Constitution. They taught it to me too well. And that is why I can stand here and fight for it and feel very comfortable with it.

I do not care about some other prosecutor who is a prosecutor in a state somewhere in Georgia who gets up and defends all prosecutors. I know the reputation of some prosecutors. I know the lives that have been ruined by some state prosecutors. They are no better than these federal ones that we are talking about.

I want criminals to be apprehended, to be investigated, to be locked up. But I want people to have a chance to have their voices heard and to have a chance to be innocent until proven guilty, and that is why we have got to go after this special prosecutor.

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

Mr. Chairman, I rise in opposition to the Conyers perfecting amendment, and I also rise in opposition to the motion to strike the McDade language that is in this bill.

Quite simply, the issue before us is whether the Government attorneys at the Department of Justice should abide by ethical rules that all other attorneys have to abide by, or can they make up their own standards of conduct?

Title VIII of the bill before us requires that federal prosecutors comply with the same state laws and the rules of ethics as other attorneys. In 1980,
Congress passed legislation that has required that each Department of Justice lawyer to be "duly licensed and authorized to practice as an attorney under the laws of a state, territory, or the District of Columbia."

The amendments held that the statute requires the Federal Government lawyers to comply with the ethics rules of their respective states of admission. I believe this is very reasonable. This is not an onerous or burdensome requirement. The attorneys for the Federal Government should comply with the ethics standards in the states in which they are duly licensed.

The gentleman from Arkansas (Mr. Hutchinson) in his arguments presented an example whereby an assistant United States attorney might find himself litigating in one state and through the discovery process find himself in two other states. And it says that if in fact that assistant U.S. Attorney is faced then with inconsistent rules on ethics, what should he do? We seek the higher standard. That is an easy one. We should always be for the higher standard.

So when ethics conflict, do not go to the floor and figure out how we can maneuver through it. Seek the higher standard. So I do not see the inconsistency. If in fact you set your life to live by the higher standard, it is an easy question.

I also want to comment, the Department of Justice, I think unfortunately, has attempted to thwart it. I think this bill and those who believe that Government attorneys should be held accountable and be held to the highest standard. Government prosecutors, they hold tremendous power over life and liberty of our citizens. I have been one, so I understand the power out of the U.S. Attorney's Office.

Title VIII of the bill will hold these Government attorneys, paid for by the tax dollars, to the same standards of those attorneys and create a system whereby they will be held accountable to the regulations and in fact to the highest standard.

Under title VIII, the Department of Justice employees, they are held to such actions. And I sat down here as I was listening to the debate and thought I would make a list of all types of things: Whether their statements and actions by these prosecutors in due process; whether it is through the process of filing criminal information, grand jury, the discovery process, the jury alone, the judge alone; whether their actions are misleading in evidence or by the witness or by the law; whether their statements are inaccurate or they use inflammatory actions or use discrediting statements. For whether their actions are meant to harass or use threats or verbal abuse of a witness or of a defense counsel; if their actions are inflammatory or they use false accusations, they use threatening; they ride an accusation; defendant or witness or the defense counsel; or if in fact that their actions are arbitrary or capricious, held without any forms of standards; if in fact they are faced with a conflict of interest; whether their actions are based on a vindication; whether they operate in bad faith; whether they have abusive or overzealous misconduct; whether in fact they are withholding exculpatory evidence; whether it is in favor of a defendant or to impeach a particular witness; in fact, where there are issues of conflict of interest, whether they are personal, pecuniary, or political.

So the list goes on and on, and I think that, in fact, these attorneys should be held to the same standards whatever jurisdiction for which they are in.

When we look at the symbol of lady justice, lady justice is blind. Lady justice is blind. And what it means to the prosecutors are that they are not to be privileged. They are to be held to a justified standard, whether it is picking on an individual because of their age, race, gender, national origin, or the station of life. The process is meant to be fair. But lady justice is blind, nor does she give a wink to unethical or abusive behavior or conduct.

Mr. CONYERS. Right, okay. But you do not support it.

Mrs. JACKSON-LEE of Texas. Mr. Chairman, let me respond to many of the issues that have been expressed on this floor. I would say to the gentleman from Pennsylvania (Mr. McDade) that it is my view that no one deserves to be put on the trash heap of life. That sounds like a very harsh statement, but that is not a judgment on your destiny. But I do believe that we have an opportunity today to maybe speak for many across this country who unfortunately were caught in the web of someone's misdirection and someone's abuse of power. I think it is appropriate for those of us who are members of the Committee on the Judiciary to say first of all that prosecutors across this Nation have done good by the people of the United States of America. They have prosecuted those well deserving of being prosecuted. They are by and large officers of the court who have upheld the highest standards.

But why are we arguing against prosecutors being subject to the same State laws and rules and local court rules and State bar rules of ethics of any other series of lawyers? Why are we suggesting to our constituents that there is something wrong with requiring prosecutors, Federal prosecutors, to not seek an indictment against you with no probable cause, to fail to promptly release information that may exonerate you, to attempt to alter or misstate evidence, to attempt to influence or color a witness's testimony, to act to frustrate or impede a defendant's right to discovery. Yes, the scale of justice is balanced and blind, and that is what we are speaking of, to be able to equalize you in a court of law against a Federal prosecutor representing the United States of America.

Let me thank the prosecutors for going into the deep South in the 1960s and raising up issues of civil rights that other local attorneys could not raise up. Let me thank them, The Department of Justice did an amazing job in dealing with those issues. So we realize the uniqueness of the Federal prosecutor system. But does that mean that we throw people to the trash heap of life? Do you lose all of your rights because you go into a Federal courtroom and a prosecutor says, "I have all of the rights"? I believe that we are doing something here that is against the boundaries of respect for our Federal system.

Let me say as a member again of the Committee on the Judiciary, yes, I think our work might have been better if we had had hearings. In fact, I do not think we are finished. I think we must proceed and investigate even more whether there are abuses across the country. But today we are where we are. We have an opportunity not to attack but to make better.
This underlying amendment and, of course, the amendment by the gentleman from Michigan that includes the independent counsel, which is very clear, an employee of the Department of Justice is the independent counsel, will protect you the citizen against the kinds of abuses which we face every day.

There is something that is scripturally based. When the woman touched the hem of the garment of Jesus in Christian doctrine, it was said she was healed. It is difficult, of course, to conceive prosecutors along those lines. But they say touch their garment and get no justice. That is the tragedy of what we face.

There is no disgrace for those of us who are members of the Committee on the Judiciary to be able to say that Ken Starr has abused the process, for I am glad the President is going to the grand jury. I am glad Monica Lewinsky. We had no quarrel with the process of justice. But we do have a quarrel with an independent counsel who leaks and leaks and leaks. These amendments will make it better for all Americans. For that reason I think that we should support the perfecting amendment and support the Martha-McCain amendment.

PARLIMENTARY INQUIRY

Mr. MCDADE. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. MCDADE. Mr. Chairman, we have been on the amendment for quite some time. I was going to see at 5:05 if we could get some kind of agreement on a time limit. Members have social engagements, most of them, beginning about 6 o'clock. I do not think we would take much time on the next amendment. I wanted to see if it was possible to get an agreement on time on the Conyers amendment and any amendment thereto.

Mr. MOLLOHAN. Mr. Chairman, we are not in a position to make any agreements on time at this time.

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

Mr. Chairman, I rise in opposition to this amendment and in further support of the underlying amendment that I co-sponsored in opposition to the provision in the base bill which would unilaterally, in my opinion, hamper our prosecutors.

I stand today to support our prosecutors. I guess I am somewhat surprised as I sit and listen to all the bashing that is going on about our prosecutors, our federal prosecutors, the people who are presidially appointed and confirmed by the Senate who serve in our 93 positions as U.S. attorneys as well as our assistant U.S. attorneys, the people who prosecute day in and day out throughout this country. If people are to be prosecuted, not in a perfect way and as we hear anecdotal stories of perhaps cases that should not have been prosecuted, and I have great respect for the gentleman from Pennsylvania, I know very little about his case, and mistakes have been made, I am sure, throughout the history of prosecution.

But, as has been said, by and large these investigators trying to do the right thing in many cases and in very dangerous, very tough situations. What I want to guard against here today is an overreaction to these anecdotal cases. What I want to prevent is the handcuffing of our prosecutors that requiring them as the underlying bill does to submit to the rules and regulations and disciplinary proceedings of the various States in which they prosecute. These 50 States have enacted individually their own rules and regulations for disciplinary procedures for their attorneys and rightfully so, because they practice in their State courts.

The U.S. attorney, and let me be clear on this, the U.S. attorney and the Assistant Attorney General at the Federal courts. They already are obligated to stand behind Federal guidelines in terms of their disciplinary behavior, their ethical conduct as established by the Attorney General of the United States. In this bill, and I believe in overreaction fashion, is to make those U.S. attorneys, those federal prosecutors, submit to various State regulations on their conduct.

Let us take, for example, the Oklahoma situation. So many times, the Federal prosecutor, not the State prosecutor like my colleague from Massachusetts was, but the Federal prosecutors that we talk about in this bill work in multistate litigation, pornography, interstate theft of automobiles, drug cases, where you are working with folks all over the country. In Oklahoma City, you had a tragic bombing, an instance where in that investigation they gathered evidence in Michigan and in New York and other States and brought that together in Oklahoma City for coordination. They would have had to track every piece of evidence in that case, where it came from, to ensure that it did not violate that particular State ethics and disciplinary law. That is an impossible burden for prosecutors who prosecute multistate litigation to have to do.

Let us take another State, I believe, I could be corrected, but I think Massachusetts is a State, if you arrest a low level drug dealer and you want to, as so often happens in drug cases, you start at the bottom and work your way up to the kingpin. If you arrest a low level drug dealer and you want to, you cannot talk to that low level drug dealer without that lawyer being present who is actually hired by the kingpin. You know what plays out in that situation. If that person talks to you, he may well be dead the next day.

Those are examples of how in reality this bill will play out. It will hamstring Federal prosecutors in a very inappropriate way and it will affect the administration of justice in our Federal courts and the victims of these crimes over and over.

Again, I have great respect for the people who are on the other side of this issue and who President involved in the system. But yet I cannot help but believe we are literally throwing out the baby with the bath water here. This is totally, totally unnecessary. For instance, it creates a misconduct board which is constituted by appointments from the President and from the House. That in and of itself violates the very sacred separation of powers doctrine.

I would encourage people to stand back from the emotion and look at the overall interest of justice here, not just a few very bad cases, and stand behind our prosecutors who already subscribe to these ethical laws and oppose this amendment.

Mr. MCDADE. Mr. Chairman, I am asking that there may be some accommodation with respect to the limitation on time if it is limited to the amendment offered by the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member of the Committee on the Judiciary.

The CHAIRMAN. The Chair would eagerly await that.

Mr. MCDADE. Am I accurate in that? I understand that is acceptable.

Mr. MOLLOHAN. Could the gentleman outline his proposal?

Mr. MCDADE. Yes. May I say to my friend from West Virginia that my understanding is that if we limit the limitation on time, if we can get one, to the Conyers amendment, that that is an acceptable proposal to be made. And if that is the case, I would inquire how many speakers there are that remain that would like to be heard on the Conyers amendment.

Mr. MOLLOHAN. We have several. Does the gentleman have a time proposal?

Mr. MCDADE. My understanding on this side is that we have but two, each five minutes. I would suggest 20 minutes, 10 per side, and then vote on the Conyers amendment.

Mr. MOLLOHAN. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. MOLLOHAN. Can we limit time on the Conyers amendment and not on the underlying amendment?

The CHAIRMAN. Yes, that would be the understanding of the chair.

Mr. MCDADE. May I say to my friend, I find that there are some others on my side who also wish to talk on the Conyers amendment. Four members, five minutes apiece is 20, and you have two. Twenty and 20. Is that acceptable to the gentleman?

May I inquire of the gentleman, how about 15 and 15 per side? I am advised that Members over here do not intend...
to take the full time, that they can get their remarks in the RECORD, and then the amendment would be ripe.

Mr. MOLLOHAN. I think we can agree to that on the Conyers amendment, 15 on each side.

Mr. MCDADE. Mr. Chairman, I ask unanimous consent the debate on the Conyers amendment and the amendments thereto cease in 30 minutes, equally divided.

The CHAIRMAN. And all amendments thereto, equally divided?

Mr. MCDADE. Yes, Mr. Chairman.

Is there objection to the request of the gentleman from Pennsylvania? PARLIAMENTARY INQUIRY

Mr. MOLLOHAN. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. MOLLOHAN. Are there any amendments to the Conyers amendment in order?

The CHAIRMAN. In theory there would be, but if the request is granted, of course they would be debatable within that time.

Mr. MOLLOHAN. Mr. Chairman, we would not want to make the agreement if it were to include time limit on any potential amendments on the Conyers amendment.

The CHAIRMAN. That is the understanding of the Chair.

Mr. MOLLOHAN. That we would not have any amendments on the Conyers amendment that would become a part of the time agreement.

The CHAIRMAN. The request would only impact the Conyers amendment itself.

Mr. MCDADE. Mr. Chairman, I renew my unanimous-consent request.

The CHAIRMAN. Would the gentleman restate his unanimous-consent request?

Mr. MCDADE. Mr. Chairman, I ask that all debate on the Conyers amendment cease in 30 minutes, equally divided on each side, that I control time here and the gentleman from Michigan control the time on that side.

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

Mr. HUTCHINSON. Reserving the right to object, Mr. Chairman, it appears to me that the request has two people controlling time that are both in favor of the Conyers amendment. I would like to claim time in opposition.

Mr. Chairman, I trust the gentleman from Pennsylvania to control it. I just would like to make sure that it is controlled.

Mr. Chairman, I withdraw my reservation of objection.

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

There was no objection.

The CHAIRMAN. Without objection, the unanimous-consent request is granted whereby debate will cease in 30 minutes, 15 minutes controlled by the gentleman from Michigan (Mr. CONYERS) and 15 minutes controlled by the gentleman from Pennsylvania (Mr. MCDADE).

Mr. MCDADE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Illinois (Mr. HRISE), the chairman of the Committee on the Judiciary.

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

Mr. HYDE. Mr. Chairman, I think the Conyers amendment is inappropriate, but I do not disagree with the underlying thought, which is that independent counsels ought to be accountable.

I go back to the Iran-Contra days when Elliot Abrams was destroyed by an independent counsel, I thought very unjustly, when Caspar Weinberger was indicted three days before an election, and there is just no accountability; so there ought to be. This is not the time to do it. The time to do it is when we reauthorize the bill next year.

In 1994, when we reauthorized the independent counsel, there were some suggestions for accountability. They were shot down by the chairman of the House Committee on the Judiciary then, they were shot down by the chairman of the Senate Judiciary Committee. They were perfectly happy with the language of the bill as it then existed.

Now, of course, experience has changed their mind. So I agree, but never forget the ultimate discipline will be the grand jury. Sth will not dismiss the independent counsel, and if he is half as bad as people say, I wonder why she has not dismissed him. But that is a question for another day.

But any lesser sanction would erode the independence of the independent counsel, and we must keep the independent counsel independent.

So I think the gentleman’s amendment is mis-timed, overshoots the mark and ought to be defeated.

Mr. CONYERS. Mr. Chairman, I yield such time as she may consume to the distinguished gentlewoman from California (Ms. PELOSI).

(Ms. PELOSI asked and was given permission to revise and extend her remarks.)

Ms. PELOSI. Mr. Chairman, I especially thank the gentleman from Michigan (Mr. CONYERS) for his leadership in bringing this amendment to the floor, which I wholeheartedly support and consider a breath of fresh air. I also rise in support of the underlying McDade-Murtha bill.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Chairman, I rise in strong support of the Conyers amendment as well as in opposition to the Hutchinson amendment, which would then strike the McDade-Murtha provision.

In essence, McDade-Murtha codifies the long-recognized, but recently-ignored principles that U.S. Attorneys must abide by the same rules of ethics as all other practicing lawyers. The Conyers amendment says that this includes special counsel as well, not just the people who are currently employed by the Department of Justice, and that makes all the sense in the world.

Limited government is the prerequisite for liberty and justice. That is what we are talking about today, limiting government power to what is a reasonable power to maintain order in our society.

But, however, over the last three decades, because of the fear of crime we have ended up granting enormous power with very few checks and balances to prosecutors. We have just been standing their power, and yours truly is just as guilty as anybody else out of fear of crime to give prosecutors power without having any checks and balances. Now we are surprised to see that big government with lots of power, people that government tend to abuse that power.

Our Founding Fathers would not be surprised at that. The fact is every time we expand power we have to put checks in place or there will be abuses of power. For far too long we have seen out-of-control prosecutors who now have all this more power to attack the bad guys, not seeking truth or not trying to protect the innocent but instead engaging themselves in self-aggrandizing, targeted attacks, often pushing relentlessly for some kind of prosecutorial victory regardless of the cost and, at times, regardless of the actual guilt or innocence of the target.

I and other supporters of the McDade-Murtha provision, and we are advocates of law and order, take this stand today to protect freedom and liberty threatened by prosecutors who are more like big government with lots of power than the advocates of law and order.

The gentleman from Indiana (Mr. BUYER) answered these charges, that there is going to be confusion, that we have different standards at the local level. The fact is that we expect our prosecutors to be at the highest level because we are protecting the rights of our citizens, the freedom of the people of the United States of America.

Far too often we have seen cases like the gentleman from Pennsylvania (Mr. MCDADE) where prosecutors are out of control and politically motivated. They go out and destroy public officials and public people. But what about the little guys? There are guys who have no money to defend themselves and are faced by these same abusive prosecutors?

No, putting down a code of conduct, if my colleagues will, a standard of ethics for the prosecutors, is something that all of us in the legal profession. The gentleman from Indiana (Mr. BUYER) was given permission to revise and extend his remarks.

Ms. PELOSI asked and was given permission to revise and extend her remarks.

Ms. PELOSI. Mr. Chairman, I especially thank the gentleman from Michigan (Mr. CONYERS) for his leadership in bringing this amendment to the floor, which I wholeheartedly support and consider a breath of fresh air. I also rise in support of the underlying McDade-Murtha bill.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Chairman, I rise in strong support of the Conyers amendment as well as in opposition to the Hutchinson amendment, which would then strike the McDade-Murtha provision.

In essence, McDade-Murtha codifies the long-recognized, but recently-ignored principles that U.S. Attorneys must abide by the same rules of ethics as all other practicing lawyers. The Conyers amendment says that this includes special counsel as well, not just the people who are currently employed by the Department of Justice, and that makes all the sense in the world.
involved in prosecution in our country have these standards and no on Hutch-inson.

Mr. McDADE. Mr. Chairman, I yield 2 minutes to the distinguished gentle- man from Alabama (Mr. CALLAHAN). (Mr. CALLAHAN asked and was given permission to revise and extend his remarks.)

Mr. CALLAHAN. Mr. Chairman, I am not a lawyer, and I do not apologize for that. But I do have a legal question that I would like for some of the legalese Members who are so educated in the law to inform me.

The Mobile Press Register, my hometown newspaper, recently published a story where it says a former Internal Revenue informant in a Mobile diesel fraud case claims the IRS paid him to skip town during the May trial where his testimony could have helped the de-fense.

When we questioned, or when the press questioned, the IRS and the De-fense Department as to whether or not it took place, they admitted that they gave the man $2,500 to leave town during the trial, but could not tell us against the defense or for the defense. The FBI then said, well, this guy is a liar and that he cannot be trusted. Well, if he is a liar and he cannot be trusted, why did they give him $2,500?

Does the Federal Government have the authority, any of the legalese Members can tell me, to pay a defense witness to leave town if he agrees not to be there during the trial and testify, and, if that is the case, does the under-lying amendment offered by the gentle-man from Pennsylvania (Mr. McDADE) and the gentleman from Pennsylvania (Mr. MURTHA), does it help correct a situation taking place like that in the future?

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

Mr. CALLAHAN. I yield to the gentle-man from Illinois.

Mr. HYDE. The answer is absolutely not. That obstruction of justice and was a crime.

Mr. CALLAHAN. Then in the gentle-man’s opinion, as a prosecutor and as a man learned in the law, should the J us-tice Department in that district indict the IRS individual who gave him this money?

Mr. HYDE. If the version that the gentleman read is accurate, there is a lot of work for the J ustice Department to do right down there where that happened.

Mr. CALLAHAN. Mr. Chairman, I as-sume everything we read in the newspa-per is factual, but giving the benefit of the doubt that it might not be fac-tual, I think that the investigator, the defense attorney in Mobile, who inci-dentially has called me because J anet Reno told him to and asked me to vote against the underlying bill, which I in-tend to do anyway.

Mr. MCDADE. Mr. Chairman, I yield 2 minutes to the gentleman from Cali-fornia (Mr. BERMAN), a distinguished member of the Committee on the J udici-ary.

Mr. BERMAN. Mr. Chairman, I thank the gentleman from Michigan for yield-ing this time to me.

I listened with great interest to the comments of the very distinguished gentleman from Illinois (Mr. HYDE), and I would say every argument he gave against the Conyers amendment applies just as forcefully in support of the Hutchinson amendment and for striking the underlying provi-sion, and that is going through the reg-u-lar or, if it is not an intent of an independent counsel law or in the con-text of a Justice Department reauthor-ization we could look at this proposal, look at the question of improper pros-ecutorial tactics and fashion an appro-priate remedy.

But if there is going to be the McDaede-Murtha language in this bill, then I cannot think of a reason in the world why those same restrictions should not apply to staff and to an independent counsel under the in-dependent counsel himself.

Independent counsel working in a State, if the J ustice Department law-yer should be complying with the local bar rules, then the independent counsel lawyer should be complying with the local bar rules. If improper overzealous prosecution tactics, the kinds of sto ries that the gentleman from Alabama (Mr. CALLAHAN) told us about, are going on, then an independent review board should be reviewing those tactics as well as the tactics of J ustice Depart-ment lawyers.

I have some concerns about the base proposal, and I will speak to that when the Hutchinson amendment comes up, but we should support the Conyers amendment and then treat everybody in the similar situation the same way.

Mr. Chairman, I urge an aye vote on the Conyers amendment.

Mr. MCDADE. Mr. Chairman, I yield 6 minutes to the gentleman from Arkansas (Mr. HUTCHINSON), a distinguished Member.

Mr. HUTCHINSON. Mr. Chairman, I thank the distinguished gentleman from Pennsylvania (Mr. McDADE) for the courtesies that he has extended to me. He has been in this body some time longer than I have, and he has taught me a few things. I have the utmost regard and high respect for the gent-leman.

There has been some mention today about unfairness in prosecution, and I do not dispute that it happens, that it has happened in this body. The gentleman from Pennsylvania (Mr. McDADE) has referred to a case; others have.

I have made mention of the fact I am a former Federal prosecutor, and that is true. I was a prosecutor in the mid-80’s, and I left that, I became a de-fense attorney so I have sat in that court-room and I have heard a jury come back with an acquittal, and I re-alized an acquittal does not remedy ev-erything because an individual defend-ant who has been through an enormous Federal criminal trial still suffers con-sequences.

But I believe that we took a big step in this Congress in remedying and cur-ting the striking of an independent counsel law, and that was when we passed and it was signed into law the provision that said that if there is a frivolous prosecu-tion, then the acquitted defendant can recover attorney’s fees from the gov-ernment. I think we need to have time for that to work. I think it strikes a better balance. I think that prosecutors were concerned about that, that is a chilling effect. Well, I hope it is a re-medial effect. I hope that it strikes a better balance. So I am very pleased with that.

But I do want to say also that a num-ber of Members have said, why in the world should we have Federal prosecu-tors who should be exempt from the State ethics law? And that is just not the case that we have presently.

Presently, as a Federal prosecutor, every Federal prosecutor has to be li-censed to practice law, are subject to the state licensure laws of their state, whether it is Virginia, whether it is Ar-kan-sas. They have to abide by those ethics laws. That is the current law.

What the present proposal is, wheth-er it is the independent counsel under the Conyers amendment or whether it is the underlying bill, it would bring all Federal prosecutors subject to not the ethics laws of their State, but to every State in which they engage in their duties, and that is the point that my good friend the gentleman from Tennessee (Mr. BRYANT) was making.

In the multistate investigations we have, when you are traveling down to Florida to interview a witness, when you are going to Louisville, when you have multistates involved, you have conflicting laws with different States. My good friend from Massachusetts has some very stringent bar rules that are in conflict with the ethics laws in our State and hamstring what a prosecutor might be trying to do and what could be perceived as unfair.

In addition to the reviews of the State ethics laws, you presently have the Office of Professional Responsibil-ity. You have the inspector general that will have review over these Fed-eral prosecutors, in addition to the Federal courts.

But let me say in reference to the Conyers amendment on the independ-ent counsel, the essence of the Conyers amendment brings the independent counsel under the Misconduct Review Board of title VIII. The Misconduct Re-view Board is, first of all, a board com-posed of three members. Those three members are appointed by the Presi-dent of the United States.

Mr. CALLAHAN. Mr. Chairman, I yield 2 minutes to the gentleman from Cali-fornia (Mr. BERNARD), a distinguished member of the Committee on the J udici-ary.
want to bring somebody who is supposed to be independent of the administration under the review of the Misconduct Review Board of three people appointed by the President? It makes no sense.

I ask the gentleman from California (Mr. Cox) says we have 10 rules that ought to be obeyed by Federal prosecutors. We already have ethical rules for our Federal prosecutors and State prosecutors. But those 10 rules have to be interpreted by a Misconduct Review Board. So when it says you cannot bring charges without probable cause, that is what a grand jury determines.

Now we are going to have a Misconduct Review Board determine whether there is probable cause or not. That is second guessing, that is an impossible burden put on prosecutors, and it is a chilling effect. I believe we should have a higher standard, but that is a higher standard that is imposed by our State ethics laws, that is applied by the present system.

Let me end with two points: First of all is a letter that was signed by Democratic and Republican former Attorneys General. They said in their letter in opposition to the proposal that the Department’s policy already requires its attorneys comply with the ethical rules of the States in which they are licensed and practice. So it is already the rule. Across the board they have opposition to this.

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

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

Mr. ROHRABACHER. Does the gentleman believe if a prosecutor, for example, encourages a witness to commit perjury or breaks the law in some other way, that that prosecutor should himself or herself be prosecuted for violating the law for doing something like that?

Mr. HUTCHINSON. Reclaiming my time, absolutely. That is obstruction of justice.

Mr. ROHRABACHER. How many prosecutors have been prosecuted? Almost none, is that right? Instead, like in the case of the gentleman from Pennsylvania (Mr. McDade), they get promotions.

Mr. HUTCHINSON. Mr. Chairman, reclaiming my time, under the present situation that is misconceived that is subject to, as well as political investigation. When I talk to people who are in hearings that are involved with the drug cartels, I ask them the question, do those in law enforcement have greater resources, or those in the drug business? And whether it is the DEA or those in the cartels, they say the other side have more weapons.

What we are trying to do by this proposal is give the DEA more tools and more tools to those on the other side. We need to strengthen law enforcement, not strengthen the drug cartels.

Mr. CONyers. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from New York (Mr. HINCHY).

Mr. Chairman, will the gentleman yield?

Mr. HINCHY. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, the gentleman from Arkansas (Mr. HUTCHINSON) is a great member of the Committee on the Judiciary and he is a great lawyer and was a good prosecutor, a good defense man, but what he needs to understand is that we are not revising or dealing with the independent counsel statute. That comes up next year, and, brother, we have plenty to say about that.

All we are doing now is making the very elementary, simple, nonlegal assertion that the independent counsel is an employee of the U.S. Department of Justice and is subject to the same rules, (6(e) and everything else, that U.S. Attorneys are. That. Nothing more.

Mr. HINCHY. Mr. Chairman, reclaiming my time, I thank the gentleman for making that point. It seems to me that in the context of this debate, which is an extraordinarily important one, that there is one basic point that we need to focus on, and that is a very simple one: The underlying principles of this Republic, the founding and sustaining principle, is that government draws its just authority from the consent of the governed. That is all we have. All we have. We all learned that in grammar school.

You cannot have the consent of the governed unless you have their confidence. The governed cannot give their consent unless they have confidence in that which they are giving consent to.

Nowhere in the government is that more stringently important than with regard to the activities of the Department of Justice. And the reason for that is obvious, because the Department has the extraordinary power over individual Americans, over life, liberty and property of every single citizen of every State.

Therefore, particularly the Department of Justice must be held under strict constraint. Nowhere else in the government is it as important as in the Department of Justice. That is why the McDade language in the Commerce-Judge bill is so important, and we owe the gentleman a debt of gratitude, the gentleman from Pennsylvania (Mr. McDade) and the gentleman from Pennsylvania (Mr. MURTHA), for bringing this language to us in the context of this bill.

However, it is also clearly just as important that every employee of the Justice Department ought to be covered by this language, without exception. There should be no exception because every employee of the Justice Department has this prosecutorial investigative power, that ability to deprive Americans of life, liberty and property. Therefore, we need this perfecting amendment to make more powerful, more straightforward, more direct the underlying principles of the McDade language.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. HINCHY. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I want to thank the gentleman both for his clarification and his passion. I think we would be doing a great disservice to this debate if we did not clarify that this is not a point and singular attack on anyone. It is posed to provide the cover of ethics and of certain legal standards that all lawyers across the Nation have to abide by to all lawyers that are under the Constitution and governing laws of the United States of America. I ask the gentleman, are we simply engaging in a discussion of fairness, that ethics is the creed, if you will, the oath, if you will, the guiding force that should guide all of us as we relate to those Americans who come under the system of justice?

Mr. HINCHY. Mr. Chairman, reclaiming my time, I would say absolutely right. Every citizen of this Republic has the right to expect ethical behavior from every other citizen, but particularly every citizen of this Republic has the right to expect ethical behavior from everyone who is placed in a position of prosecutorial responsibility. Nowhere else in the system of government is the requirement to adhere to a strict, clear specified code of ethics more important than those who have been entrusted with prosecutorial responsibilities.

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

Mr. HINCHY. I yield to the gentleman from Massachusetts.

Mr. DELAHUNT. Mr. Chairman, I think it is important, given the statements by my friend from Arkansas, whom I have great respect for, that if somehow you support McDade and Murtha you are somehow assisting or abetting drug cartels in the United States. That simply is not the case.

State prosecutors historically have conducted investigations that are multistate in nature, whether it be organized crime, whether it be drug trafficking, whether it be white collar
crime. They adjust. As the gentleman from Arkansas indicated, Massachusetts has a very stringent standard in terms of prosecutorial ethics, but it has not caused a problem.

It is reminiscent of when the Warren Court issued the landmark cases in Mapp and Miranda. It was going to impede and be the end in terms of law enforcement. I dare say now we have better and more professional law enforcement that is more ethical than ever before.

Mr. McDade. Mr. Chairman, I am delighted to yield 1 minute to the able gentleman from California (Mr. Hunter).

(Mr. Hunter asked and was given permission to speak out of order and to revise and extend his remarks.)

HONORABLE RANDY "DUKE" CUNNINGHAM DOING WELL FOLLOWING SURGERY

Mr. Hunter. Mr. Chairman, I wish to announce to my colleagues that our good friend, our Top Gun "Duke Cunningham, who underwent surgery today, although that surgery successfully. He is doing great. He has already made one attempt to sneak past a corpsman and get back to work, but they apprehended him and he is back in bed to rest for a little bit. He just wishes all of you well.

It would be great, if anybody would like, we would love to have you come to the Republican cloakroom, Democrats and Republicans, and sign the get-well card that we put together for Duke. He is doing well and he is going to be back shortly.

Mr. McDade. Mr. Chairman, I yield 3 minutes to the gentleman from Tennessee (Mr. Bryant).

□ 1745

Mr. Bryant. Mr. Chairman, under the circumstances, I think the gentleman has been extremely gracious.

I certainly I want to, I am sure, speak for my colleagues who oppose this bill, this portion of the bill, that we have obviously nothing personal against the gentleman and his situation. It is just that we have, we believe, legitimate differences in this particular bill.

Mr. Chairman, I would stand up tonight and argue against the issue at hand, and that is, the amendment offered by the gentleman from Michigan (Mr. Conyers), the ranking member of the Judiciary, which would bring into this bill the independent counsel.

As my colleague, the gentleman from Arkansas (Mr. Hutchison) has so well pointed out, it is almost ludicrous when we envision the aspects of this bill as it might be applicable to the special prosecutor, especially when we consider the Conduct Review Board, which is made up of three members appointed by the White House, and also members appointed in an advisory fashion by the Members of Congress.

It certainly would thwart not only any color of independence, but any independence, or any ability of the independent counsel to exercise independence. It would do that, as well as impede, very clearly, the investigation by being able to come forward at any point and make objections to unfair prosecutions in very vague, very broad terms, that it would that independent investigation while this disciplinary action against the independent prosecutor have to be investigated.

I would point out to my colleagues on both sides that the Attorney General, Janet Reno, opposes this bill in total, and states, in regard to the disruptions that would occur in the U.S. Attorney General’s office, as well as, we would speculate, in the independent prosecutor’s office, that would devastate their ability to do the job.

She says, for example, and this is Janet Reno talking, “For example, a grand jury target could allege the prosecutor was bringing discredit to the Department of Justice. That allegation that could stop the prosecution, they are bringing discredit on the department.” “The Attorney General would then be required to complete a preliminary investigation within 30 days. They have to stop and do this within 30 days. “The prosecutor would be forced to devote his or her attention to the misconduct claim rather than...”

the underlying criminal investigation.

It is just amazing, if one sits down and thinks about, I believe, the unintended, very sincerely, consequences of this bill in terms of how it will disrupt our very good prosecutors and their effort to stand in that gap between the law-abiding citizens of America and the criminals of America.

I point out that there are mistakes made. In those cases, the system does work. There is a system out there for the independent body.

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

Mr. Chairman, I want to thank all the Members on both sides of the aisle for a very constructive debate. I think this is very important, and I appreciate the fair discussion under which this amendment has been considered.

I would point out to the last speaker, able member on the Committee on the Judiciary, the gentleman from Tennessee (Mr. Bryant), that he is arguing the underlying bill, but the vote that is now coming up is merely whether or not independent counsel are included in the provisions that apply to U.S. attorneys.

If we do not do that, we have made an incredibly large error, and I think it was inadvertent when this bill was drafted sometime ago. I am pleased that many of the authors of the bill are supporting this amendment.

I urge its support, Mr. Chairman, and I yield back the balance of my time.

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

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

Mr. McDade. Mr. Chairman, let me say to my colleagues, I had not intended to speak on this aspect of the bill, but in view of the comments that were made a few moments ago, I am compelled to.

Under the current system that we heard described by my colleagues, the gentlemen from Tennessee and from Arkansas, there is a remedy for a citizen, once convicted. They can appeal to another court, a higher court. They can make a recommendation or an argument at OPM, the Office of Professional Responsibility in the Department of Justice, after they have been convicted; lives ruined, bankrupt. If they can prove something, they might get a reversal of their case.

Let me be specific. In the case of United States versus Taylor about a year ago, the Department of Justice twisted the testimony of an individual who was convicted on perjury testimony. If we read the case, we will read that the judge that tried it found the employees of the Department guilty of obstruction of justice. What a charge, corrupting the system that they are supposed to be defending.

What did the Office of Professional Responsibility do after the judge made that finding? Mr. Chairman, they gave the people who corrupted that system a 5-day suspension from their jobs, a 5-day suspension for corrupting the system of justice in this country. No better example exists as to why we need to empower a citizen to have the right to have his case heard in front of the conviction and away from the OPM by an independent body.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan (Mr. Conyers).

The question was taken; and the Chairman announced that the ayes appeared to have it.
August 5, 1998

CONGRESSIONAL RECORD – HOUSE

Mr. ROGERS. Mr. Chairman, there is in everybody’s mind, and I do not see any reason why we should not vote on this and then go forward with the rest of the evening with time with our families. We have just debated this, we are sides. So Members could actually leave right now and not be concerned about votes until after 8 p.m. and roll all those votes likewise until after 8 p.m. and then consider all votes. So Members could actually leave right now and not be concerned about votes until after 8 p.m.

Mr. ROGERS. That is correct. Mr. MOLLOHAN. Mr. Chairman, I withdraw my reservation of objection. Mr. ROHRABACHER. Mr. Chairman, reserving the right to object. We have a list of Members right here, right now. We have already debated this issue, it is in everybody’s mind, and I do not see any reason why we should not vote on this and then go forward with the rest of the evening with time with our families. We have just debated this, we are sides. We have just debated this, we are sides. We have just debated this, we are sides. We have just debated this, we are sides. We have just debated this, we are sides.

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

For the purpose of informing the Members of the evening’s schedule so they may plan their evening activities accordingly, I am hoping that in a few minutes we can get a unanimous consent request to end the debate on the Hutchinson amendment with 5 minutes per side and then vote on that amendment, which we would request be rolled until a later time so that Members would be able to attend the evening activities during the dinner hour.

I would hope in due course of time, which we are now working with the gentleman from West Virginia (Mr. MOLLOHAN) and others on, to obtain a time limit on all remaining amendments, in which case votes could be postponed until around 8:00 at the earliest and give Members a chance to be with their families during the dinner hour.

With that in mind, I would propose a unanimous consent request that all debate on the Hutchinson amendment be concluded in 10 minutes, 5 minutes per side, after which the vote would be taken on the Hutchinson amendment, but postponed if a recorded vote is requested, to a later time.

And then I would hope that I would be able to discuss with the gentleman from West Virginia (Mr. MOLLOHAN) and others limitations on the other amendments that are attached to the bill.

The CHAIRMAN. Is there objection to the request of the gentleman from Kentucky? Mr. MOLLOHAN. Reserving the right to object, Mr. Chairman, just to clarify with the chairman that he is proposing that we do a unanimous consent request on the Hutchinson amendment now; roll that vote until after 8 p.m., giving Members a chance to go to this event; and then, in the meantime, do a unanimous consent with regard to as many other amendments as we can, and I know we have some concern about maybe one amendment on our side, after not being included in that; and roll all those votes likewise until after 8 p.m. and then consider all votes. So Members could actually leave right now and not be concerned about votes until after 8 p.m.

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Mr. HUTCHINSON. Mr. Chairman, I yield myself such time as I may consume to simply say that the amendment that is before this body, the Hutchison-Barr-Bryan amendment, would delete title VIII of the appropriation bill, which is called the Citizens Protection Act.

Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. BARR).

PARLIAMENTARY INQUIRY

Mr. ROGERS. Mr. Chairman, Members are asking whether or not we will postpone this vote. The answer is we will recommend the vote be postponed until at least 8 p.m.

The CHAIRMAN. The Chair has that discretion when the request for a recorded vote is made we will take that under advisement.

Mr. BARR of Georgia. Mr. Chairman, as with most pieces of legislation, it is as important as how we do it as what we do. We do not do as it is what it does do, and I urge all of my colleagues to listen very carefully to these final minutes of debate.

This is a very emotional issue because people who are well-known to us are in favor of it. But this bill should not go forward. This amendment that we have should go forward, and the underlying title VIII stricken, because it will do tremendous injustice to the fabric of how United States attorneys conduct very sophisticated, very complex, very far-reaching multi-state investigations.

There is plenty of mechanisms already in place to address the occasional bad apple, if there is a prosecutor that practices misconduct. Notwithstanding that, if we have a problem with a particular U.S. attorney, then we should take action against that U.S. attorney. We can do that under current law and procedures. If we do not like the standards set by an Attorney General, then we should take action against that Attorney General, but we should not throw out the ability of our United States attorneys to conduct multi-state investigations, such as RICO, public corruption, drug cases or fraud cases.

If, in fact, the law in one particular State is different from the law in another particular State, both involved in that multi-State investigation, action could be brought against that United States attorney for doing something illegally under Federal law and under the law of a State in which they are operating just because it might happen that part of a case falls over into another State where that sort of action, such as consulting with the Attorney General, such as conducting electronic eavesdropping, might be against the law in that one State.

Also, title VIII would allow an outside panel not composed of prosecutors, to have full access to every bit of the prosecutor’s case. That would be outrageous and it would, in effect, stop important prosecutions.

Let us not throw the baby out with the bath water. If there have been abuses, then let us address those particular abuses, but not change and take away the ability of Federal prosecutors to conduct multi-State investigations, I urge the adoption of the amendment.

Mr. MURTHA. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania (Mr. MURTHA), the coauthor of the bill.

Mr. MURTHA. Mr. Chairman, if the Members think I am excited about this, they are right. If they think I am sincere and focused on this issue, I am.

I sat beside the gentleman from Pennsylvania for 8 years, 8 years while he was under prosecution by the Justice Department.

We were able to raise $1 million to defend the gentleman from Pennsylvania. The Justice Department system leaked information that was erroneous, leaked continually, did everything that could be unethical; charged him with campaign contributions being bribes, charged him with handling of the White House; charged him with honoraria being illegal gratuities; tried to intimidate the House of Representatives which furnishes the money for the Justice Department.

Now, what chance would an individual have against the Justice Department if they would go after one of the most prominent Members in the House of Representatives? A jury, which came from an area that the public opinion said 70 percent of the public in that area thought that all politicians were crooks, he was acquitted in 3 hours by a jury picked at random from that area.

I feel strongly about this because it would protect the individual citizen from prosecution by not every prosecutor; I have no question that most prosecutors are above board and most prosecutors abide by the ethics rules. What we are saying in this legislation, when we defeat the Hutchinson amendment, is that they must abide by the ethics rules of the State involved.

The chief justices of the entire United States, fifty of them, all agree with us and say they ought to abide by the rule. They abide not only by their own ethics, they do not abide by the ethics of the States they are practicing in, and we say a special citizens commission should do just exactly that as they are doing for the IRS.

So I would hope that the House would rise up and show the prosecutors who are out of control, not all of them, just the ones out of control, that they need some sort of oversight and that this House will send a clear signal to those across the country that we will not stand by citizens to be prosecuted by a prosecution.

The gentleman from Massachusetts (Mr. Delahunt) said it probably better than anybody else. They have a tremendous power, the prosecutors in this country, to withhold the liberty of individual citizens. We want to make sure that prosecution is done ethically, and I would ask all of the Members of the House to vote against the Hutchinson amendment.

Mr. HUTCHINSON. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee (Mr. BRYANT).

Mr. BRYANT. Mr. Chairman, it is a difficult thing to stand up here and follow the fine gentleman from Pennsylvania (Mr. MURTHA) and the gentleman from Pennsylvania (Mr. MCDADE), and I can in no way empathize with what he has gone through because I have not done that.

The three former U.S. attorneys in this body have stood up and told my colleagues, as I tell you today, being one of those, let us not overreact. As the gentleman from Pennsylvania (Mr. MURTHA) said, the United States attorneys have tremendous power.

We, as Members of Congress, have tremendous power beyond that and let us do not abuse this situation. It was a terrible situation with the gentleman from Pennsylvania (Mr. MCDADE). It could be corrected. It is not a perfect situation, but the U.S. attorneys are under the ethics rules of their States.

Fortunately, they do many interstate prosecutions, and as the gentleman from Georgia (Mr. BARR) said, these prosecutions will be literally handcuffed if we pass this bill and make them comply with every local ethics disciplinary board proceeding which they go into, whether it is Florida, Louisiana or wherever.

I know it is tough, but let us do the right thing and vote for this amendment.

Mr. HUTCHINSON. Mr. Chairman, what is the time balance for each side?

The CHAIRMAN. The gentleman from Arkansas (Mr. HUTCHINSON) has 1½ minutes remaining and the gentleman from Pennsylvania (Mr. MCDADE) has 2 minutes remaining and the right to close as a member of the committee.

Mr. HUTCHINSON. Mr. Chairman, I yield myself the balance of the time.

The CHAIRMAN. The gentleman from Arkansas is recognized for 1½ minutes.

Mr. HUTCHINSON. Mr. Chairman, I have a short amount of time but let me just say that I do believe this is a law enforcement issue. You look at the groups that are concerned about this, that support the Hutchinson-Bryan amendment: The National Sheriffs Association; the Fraternal Order of Police; the FBI Agents Association. None of these are attorneys.

These are not attorneys. These are police officers. These are people who know what is needed in the war against drugs. The Federal Criminal Investigators Association, the National District Attorneys Association, who are state
prosecutors, the DEA Administrator Tom Constantine, the Office of Drug Control Policy Director Barry McCaffrey, each one of these have written letters supporting this amendment that we are asking the Members to vote on because it is a law enforcement issue. We have had far too many cases where overzealous prosecutors have presented high profile defendants just so that prosecutor could make a name for himself. I remember the totally unjustified case against President Reagan's Secretary of Labor, Ray Donovan, in which, after he was acquitted, made the famous speech that said, “Where do I go to get my reputation back?”

Our Federal Government has become far too big—it is far too powerful. We all have heard how, particularly the IRS is running roughshod over individual citizens. Newsweek magazine recently had on its cover—the IRS Lawless, Abusive; Out of Control.

Unfortunately while there are good federal prosecutors, there are far too many who are, like the IRS, lawless, abusive, and out-of-control. Almost no one, except extremely wealthy people, can take on the Federal Government. To require Federal prosecutors to have to follow the same ethical rules as other lawyers is a very minimal step in the right direction and toward helping to preserve at least a semblance of freedom in this Nation.

Mr. DUNCAN. Mr. Chairman, I yield myself the balance of my time.

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

Mr. DUNCAN. Mr. Chairman, I rise of course in unequivocal opposition to the amendment of the gentleman from Arkansas (Mr. HUTCHINSON).

Sometimes in this House we forget the watersheds that come our way and the moments of history that arrive here sometimes not of our own making. That is the kind of a night we face tonight because the question we are about to vote on involves the liberty of every citizen of this country.

The bill is simple. Title I simply says be ethical. Who supports it? All the chief justices of all the 50 states, the American Bar Association, every legal organization besides that who has taken a position of course supports the proposition, abide by the ethics rules. Title II. My Lord, my colleagues, what clarity. Listen to all it says. It is not hostile to a prosecutor or to the effort to prosecution. It simply says, and listen to this, if my colleagues consider this hostile, tell me, do not lie to the court. Oh, that is hostile to prosecution. Do not intimidate a witness or attempt to color their testimony. Hostile to the court. Hostile to the public. Do not leak information. Do not withhold exculpatory evidence on the person you are trying that may exonerate him or her. Hostile. Do not bring an indictment against a citizen of this country unless you have probable cause to prove that they have committed a crime.

Those are the guidelines we set down for every citizen in this Nation. I hope we will all vote against the Hutchinson amendment.

Mr. Chairman, very alarming information concerning alleged abuses and misconduct on the part of career prosecutors employed by the U.S. Department of Justice, has been brought to my attention by State Representa- tive Harold James, who is Chairman of the Pennsylvania Legislative Black Caucus, and Senator Robert Latta, a Republican in the Pennsylvania Legislative Black Caucus.

Both Representative James and Representative Washington requested my support for the Citizens Protection Act, which I have subsequently co-sponsored.

They informed me of the results of independent hearings, endorsed by the Black Caucus of State Legislators, which raised grave questions about misconduct by prosecutors. Ewing, the Nation's largest organization of African-American elected officials, in 1995 called for Congressional Hearings To Investigate Misconduct by the U.S. Department of Justice.

Mr. Chairman, the McDade/Murtha amendment addresses every area of concern expressed by my constituents. I urge its adoption.

Mr. DELAHUNT. Mr. Chairman, I rise in opposition to the amendment by the gentleman from Arkansas (Mr. HUTCHINSON).

The amendment seeks to strike title VIII of the bill, which consists of the legislation known as the Citizens Protection Act, authorized by my colleagues from Pennsylvania, Mr. McDade and Mr. MURTHA.

Let me say at the outset that I have reservations about a number of aspects of this legislation. I am also uncomfortable with the process by which it has been before the House. Matters of this complexity and importance ought to be addressed through the normal process of committee deliberation, so that the legislation can be fully examined and perfected before being brought to the floor.

Among the aspects of this legislation which I find problematic are the provisions establishing an independent “misconduct review board”—an entity which I believe could unnecessarily complicate and politicize the law enforcement mission.

Nevertheless, I support the ethical standards which comprise the core of this legislation. I cannot support to strip it from the bill. Mr. Hutchinson’s amendment does not seek to remedy any particular shortcomings of the measure; instead, it seeks to delete it entirely. Given this “all-or-nothing” proposition, I would prefer to allow the legislation to go to conference, where those of us who have concerns would have an opportunity to have them addressed.

I oppose the Hutchinson amendment and support the underlying legislation for one simple reason: as a former district attorney, I understand the truly awesome power that has become concentrated in the hands of the prosecutor. When abused, that power can and does destroy innocent lives and reputations. And the system provides few checks and balances to prevent such abuse.

When I was a district attorney, I hired many brilliant, ambitious young lawyers. I gave them a single admonition: “understand the power of your office, and do not misunderstand that being a prosecutor is not about winning and losing. It is about seeing that justice is done.”
Most of the prosecutors I have known in the course of my career have wielded their authority with integrity and restraint. But those who fail to do so can be as dangerous to the health of our society as the criminals they pursue.

Given this danger, it is necessary and appropriate that prosecutors be held to the standards of professional conduct to which other attorneys are subject. I do not accept the assertion of the Department of Justice that their attorneys should be immune from these ethical rules whenever they find them unduly confining. 

I fully appreciate the importance of “bright line” rules governing ethical behavior, as well as the difficulty in applying them to the complex realities of practicing law.

But the bill presumes that federal prosecutors are subject to stringent rules of conduct. In fact, they are. They are subject to disciplinary investigations and actions brought by the Office of Professional Responsibility, the Department’s Inspector General and the Office of Public Integrity. In addition, it is the Department’s policy that its attorneys comply with the ethical requirements of the state in which they are licensed and where they practice, unless those requirements are in conflict with federal duties and responsibilities. But, most importantly, in appropriate cases, the matter is referred to the state bar disciplinary authorities for further action.

If there is a problem with prosecutorial misconduct, it should certainly be addressed. But it is better to address it by requiring federal prosecutors adhere to a single, high standard of conduct, or to 50 different sets of ethics rules, than to make the state laws may be contrary to the obligations and responsibilities we may require of federal prosecutors. And, as importantly, a federal system requires an even-handed application of justice—an application that, in my mind, is more difficult if applications of that language are made to a system under which, for example, federal and state ethics rules act in concert.

More troubling, however, is the fact that the provisions have serious, and perhaps unintended, consequences which could cripple federal enforcement of our laws. In particular, the bill would permit defendants and their lawyers to disrupt ongoing investigations of illegal activity by raising claims of misconduct which, under the bill, would require immediate investigations. As Nora M. Manella, the U.S. Attorney for the Central District of California, which includes my district, wrote me to say that such allegations threatened the disclosure of sensitive and confidential information and could jeopardize the integrity of investigations.

The bill’s “misconduct review board” would be given authority to examine itself into ongoing criminal investigations, demanding confidential and privileged material, and interfering with a cabinet officer’s management of the internal affairs of a department.

As a result, Manella writes, “in all but the simplest of cases, prosecutors will face the risk of triggering at least some of the bill’s provisions. Far from protecting the public from misguided Department employees, the proposed bill would inhibit vigorous investigation and prosecution of those who impede the ability of federal prosecutors to enforce the very laws Congress has enacted.”

“The bill’s provision may also lead to an exodus of experienced and qualified federal attorneys. According to Manella, senior managers in her office have expressed the view that they would be reluctant to continue their federal service if the provision was enacted. If this becomes the pattern, our federal justice system would be weakened, perhaps permanently, and the vigorous enforcement of our laws both Congress and the people expect will be reduced.”

Mr. Chairman, we have to remember that our legal system is dependent on both the law enforcement officers who make arrests, and the federal prosecutors who try the cases. Let’s not hamstring our fight against crime by imposing an unnecessary set of rules on prosecutors or unintentionally giving criminals a tool with which to stall investigations.

This provision and its full implications have not been fully examined and, in my view, it behooves this chamber to approve the amendment to strike it until that examination has taken place.

I urge my colleagues to support the Hutchinson amendment, and insert the full text of U.S. Attorney Manella’s letter in the RECORD at this point.

U.S. Department of Justice,

Nora M. Manella,

U.S. Attorney, Central District of California.

August 5, 1998.
Review Board" would be given authority to inject itself into ongoing criminal investigations, demanding confidential and classified material, and interfering with a cabinet officer's management of the internal affairs of a department. In all but the simplest of cases, prosecutors will face the risk of triggering at least some of the bill's provisions. Far from promoting the public from misguided Department employees, the proposed bill would inhibit vigorous investigation and prosecution of criminals, thus crippling the ability of federal prosecutors to enforce the very laws Congress has enacted.

On a practical level, I can say this proposed law would create a greater concern about the office than any piece of legislation I can recall throughout my more than a dozen years as a federal prosecutor. Senior managers in my office—outstanding and experienced prosecutors and civil litigators—have expressed the view that they would be reluctant to continue their federal service were this bill enacted. Similarly, District Attorneys have indicated they would be loath to cross-designating local prosecutors to assist in federal prosecutions, were they subject to the bill's provisions. Should this bill pass, there is a very real prospect of a significant loss of experienced lawyers from this office, leaving the public with talented but less experienced and inexperienced prosecutors and civil litigators—have expressed the view that they would be reluctant to continue their federal service were this bill enacted. Similarly, District Attorneys have indicated they would be loath to cross-designating local prosecutors to assist in federal prosecutions, were they subject to the bill's provisions. Should this bill pass, there is a very real prospect of a significant loss of experienced lawyers from this office, leaving the public with talented but less experienced and inexperienced prosecutors and civil litigators—have expressed the view that they would be reluctant to continue their federal service were this bill enacted. Similarly, District Attorneys have indicated they would be loath to cross-designating local prosecutors to assist in federal prosecutions, were they subject to the bill's provisions. Should this bill pass, there is a very real prospect of a significant loss of experienced lawyers from this office, leaving the public with talented but less experienced and inexperienced

I cannot believe this what the bill’s sponsors intended.

As noted above, Department of Justice employees are already subject to multiple disciplines and mechanisms to ensure their adherence to the highest standards of professionalism. Enacting a bill which virtually invites frivolous complaints designed to obstruct such provisions. Should this bill pass, there is a very real prospect of a significant loss of experienced lawyers from this office, leaving the public with talented but less experienced and inexperienced prosecutors and civil litigators—have expressed the view that they would be reluctant to continue their federal service were this bill enacted. Similarly, District Attorneys have indicated they would be loath to cross-designating local prosecutors to assist in federal prosecutions, were they subject to the bill's provisions. Should this bill pass, there is a very real prospect of a significant loss of experienced lawyers from this office, leaving the public with talented but less experienced and inexperienced

Please feel free to call me, should you have any questions concerning the above.

Sincerely,

NORA M. MANELLA,
United States Attorney.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Arkansas (Mr. Hutchinson).

The question was taken; and the Chairman announced that the noes appeared to have it.

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

The CHAIRMAN. Pursuant to House Resolution 508, further proceedings on the amendment offered by the gentleman from Arkansas (Mr. Hutchinson) will be postponed.

PARLIAMENTARY INQUIRY

Mr. MCCADE. Mr. Chairman, parliamentary inquiry.

Mr. MCCADE. Mr. Chairman, I simply request that we reconsider the rolling of the vote and vote on this amendment right now instead of postponing it. The Members are here.

The CHAIRMAN. Under the rule the Chair has the discretion on this and the Chair has exercised that prerogative, and the vote will be postponed.

Are there further amendments to this section?

PARLIAMENTARY INQUIRY

Mr. KOLBE. Mr. Chairman, parliamentary inquiry.

Mr. KOLBE. Mr. Chairman, are you then asking if there are further amendments to title VIII?

The CHAIRMAN. Are there further amendments to title VIII?

Title VIII has been considered read. Are there amendments to this part of the bill?

Mr. KOLBE. Mr. Chairman, my inquiry was has the Chair asked for further amendments to title VIII? Is it now appropriate for me to ask for other amendments?

The CHAIRMAN. If the inquiry is, is it appropriate for the gentleman from Arizona (Mr. Kolbe) to offer amendments following title VIII, the answer to that is yes.

AMENDMENT NO. 19 OFFERED BY MR. KOLBE

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 19 offered by Mr. Kolbe:

At the end of the bill, insert after the last section (preceding the short title) the following:

TITLE —ADDITIONAL GENERAL PROVISIONS

SEC. . None of the funds made available in this or any other Act may be used to implement, administer, or enforce Executive Order 13083 (titled "Federalism" and dated May 14, 1998).

Mr. KOLBE. Mr. Chairman, quoting from the Constitution of the United States: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.'

That is the 10th Amendment to the Constitution of the United States.

My amendment today goes to the very heart of that and would say that the executive order issued 2 months ago by the President, Executive Order No. 13083, could significantly expand the role and power of the Federal Government.

Mr. Chairman, a couple of examples of what this executive order would do: it establishes the creation of a national standards "when there is a need" as determined by the Federal Government.

Second, it would eliminate language in President Reagan's federalism executive order regarding preemption of state law by the Federal Government.

Third, it puts the Federal Government in the position of determining when States have not adequately protected individual rights.

Even though the President has talked about suspending this executive order and may have done so today, I have not had it confirmed that the order suspending it was signed. I believe that Congress needs to speak very effectively to this issue, as the mayors and the governors, and county officials have done. We must say that we should not allow the executive order to make sure that it does not raise its head again.

Even the President's chief of staff colorfully described the administration as having messed up by not consulting with governors, mayors, and other state and local government leaders before they issued this executive order.

I applaud the efforts of the gentleman from Indiana (Mr. McIntosh), who has already begun to hold some hearings on this matter, and I know that the Committee on the Judiciary is going to examine what the effects of this executive order, if it is re-instituted, would be.

Hopefully, the administration will work with them in addition to the state and local officials that were left out of the process. But by suspending Executive Order 13083, the administration has already demonstrated that it was premature and ill-advised. And I say it is time to put this House on the record as saying we agree and we do not expect you to implement that executive order, Mr. President. We should act now because we do not know when he might act to put it back in place and we would not have an opportunity to do offer that.

That brings me to another reason for offering this amendment at this time. There is an amendment which will follow this offered by the gentleman from Colorado (Mr. Hefley) that would prohibit funding both for this executive order and the executive order that codifies administration policy, does not change Federal law or create any affirmative action program, but would codify the current Federal practices with respect to discrimination based on sexual orientation.

Unfortunately, because this amendment is protected by the rule, it cannot be divided. There is no way to get a vote separately on these two totally different issues that are out there. I think most Members in this House want to have a clean vote on these two issues separately.

Now, let me just take a moment of my time, since only 20 minutes is permitted under the rule to debate the Hefley amendment, to say that I think that we should vote aye on this, on federalism, and no on the one dealing with sexual orientation.

By passing the Kolbe amendment, it would make it clear in the next debate when we get to the Hefley debate that there is one subject and one subject only that is under discussion; and that is this simple question: Should discrimination be permitted in the federal workplace based on sexual orientation? And that question will be the only question that is involved.

The debate on that amendment is not going to be about affirmative action. It...
The history of America is the story of individual rights. It begins with a country founded on principles which had never been manifest in any society and which were not comprehensively instituted at the founding of the Republic. It has taken two centuries of struggle and the inclusion of a Civil War, a suffrage and civil rights movement to ensure the rights of minorities and women. In the context of our history, it is common sense and common decency that no one today be allowed to be prejudiced against simply because of one’s sexual orientation.

The executive order which will shortly be under review has nothing to do with the creation of special privileges, special preferences, quotas or affirmative action in any form, nor does it endorse any so-called life-style. What it does is ensure equality and fairness to a group of individuals by bringing uniformity to already existing Federal employment policies. Equal protection under the law is not a privilege to be enjoyed by some; it is a basic right to which every American is entitled.

If anyone in this favored land is discriminated against solely because of an individual's sexual orientation is okay.

Do we want that? Do my colleagues want that? I do not think so. I urge Members to vote aye on Kolbe and no on Hefley.

Mr. LEACH. Mr. Chairman, I rise in support of the Kolbe amendment and in opposition to the Hefley amendment to follow.

Mr. Chairman, I would like to speak principally to the reasons behind the amendment being offered today by the gentleman from Arizona (Mr. KOLBE).

H7248
CONGRESSIONAL RECORD – HOUSE
August 5, 1998
all civilian employees and applicants for employment” must be followed. I emphasize just that phrase. The executive order speaks of an affirmative program. It does not use that catchword “affirmative action.” The origin of the catchword “affirmative action” was the 1961 executive order by President Kennedy. In 1965 it was applied to equal housing. And in 1969 it was applied to Federal employment with regard to gender and with regard to discrimination on the basis of religion.

In 1998, there was a careful distinction, in my judgment, using the word “program,” as separate from the phrase “affirmative action,” which was well known at that time. But even if that phrase were not different (and it is and that is an important point), I strongly believe that no one should take a statute which says “you shall not discriminate” and use it as the basis of discriminating. It is for that reason that I have always opposed the use of quotas. It is for that reason that I supported Proposition 209 in my State of California. It is wrong, morally wrong, for the government to look at somebody’s skin color, to look at somebody’s gender and to say, “That is a basis for you getting a job or you getting into a university.”

And so tonight, Mr. Chairman, I will not surrender the argument to the other side. I will not say that because this executive order bars discrimination, it therefore must lead to quotas. We are right in saying that anti-discrimination is not the same thing as an obligation to use numbers. We are right in the Fifth Circuit, we are right in the Ninth Circuit and in my judgment we will very soon be justified by the Supreme Court. To every fellow conservative on this issue, I urge you, do not give in to the argument that antidiscrimination means affirmative action.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the requisite number of words, and I yield to the gentleman from California.

Mr. CAMPBELL. I will only use 30 seconds, and I most appreciate my colleague for yielding.

We need to therefore observe the distinction in the language that affirmative action is not in this executive order; that it is absurd to consider that this executive order will lead to affirmative action because one would have to observe the characteristic. And nobody, nobody, including the worst critics of this President, are saying that he is ordering the ascertainment of whether one is gay or straight in the Federal employment sector.

Lastly and most importantly, although my good friend from Massachusetts and I may part company on this, I appreciate his kindness in yielding to me tonight once again to those of us who believe there should never be the use of race or gender to distinguish among American citizens by their government, that if you buy the argument that this executive order leads to the use of orientation by the government and leads to quotas, you are giving up the argument on every other aspect that we are fighting so hard to establish in Title VII law.

Mr. CAMPBELL. I thank the gentleman. I did take my time now because I wanted the gentleman to complete this very important statement. And he is right. Some of us do differ on the role of affirmative action and its application.

But I know of no advocate of affirmative action with regard to sexual orientation nor, by the way, with religion and age, and I cite that because this particular executive order, which is going to be the subject of a later amendment, deals not just with race and gender but with religion and age and it has never given rise to affirmative action. The notion that because a category is in this executive order it will lead to affirmative action is supported by the fact that over many many years no one has ever seen an affirmative action, an affirmative outreach, an affirmative anything program with regard to many of the categories covered. The President has specifically disavowed any intention of affirmative action with regard to sexual orientation, and as one of the drafters of the Employment Nondiscrimination Act dealing with sexual orientation, I would alert Members to read that. It again specifically disavows affirmative action. We are not arguing for affirmative action in that context.

I think the gentleman from California, and I would be glad to yield him again, has made a very important point. Those of us who have a disagreement about affirmative action have it with regard to race and with gender, but no one is an advocate of it being used here. And in no case, let me just close with this, in no case have State laws on this subject given rise to affirmative action based on sexual orientation. That is a nonissue.

I yield to the gentleman from California.

Mr. CAMPBELL. I thank the gentleman for yielding one more time. First of all I think his point is very insightful. No one has ever had an affirmative action quota, minimum hire for religion or on the basis of age. But the phrase in this executive order is “affirmative action program.” I quoted, “an affirmative program of equal employment opportunity for all civilian employees and applicants for employment.”

I note that the phrase “affirmative action program” was used in the 1965 executive order to deal with the obligations of government, namely, that the government must adopt a program to root out discrimination. The phrase affirmative action was used as to the contractor and that, to my judgment erroneously by some, is argued to lead to the hiring or the promoting according to numbers. But the word “program” is a key phrase here. It means the government must root out discrimination, and then affirmative action was used to refer, at least by some, to the additional obligations on which people of good will have differed.

Mr. FRANK of Massachusetts. I thank the gentleman. I again want to stress that. Because from any angle you look at it, the affirmative action issue is not part of this. The President is not seeking it. This executive order does not trigger it. It is not, as some will argue, to enable the President to trigger it. Advocates of nondiscrimination in the sexual orientation context oppose affirmative action, and most tellingly, as the gentleman from California has said, it is indeed precisely those who would be advocates of affirmative action who insist that you can have a nondiscrimination policy without affirmative action. That is what this is.

Those who argue that articulating a nondiscrimination policy automatically engender affirmative action are undertaking the anti-affirmative action argument because they are then saying, and I never know what the converse or the reverse or the adverse is, but the opposite. They are saying that if you have one, you have to have the other. Those who want to kill affirmative action are bound to argue that you may have nondiscrimination without affirmative action.

The other thing it ultimately do want to thank the gentleman from Arizona for bringing up this so we can once again vote on the federalism order. The gentleman from Florida did it first. So we have already had a unanimous House vote to kill the federalism amendment. If the President suspended it, then he withdrew it, now we are going to vote against it again. We are killing a dead man that committed suicide before he was born. This executive order is federalism. And it was a cat it would be dead, because it is going to be killed about nine times.

PARLIAMENTARY INQUIRY

Mr. HEFLEY. Parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. HEFLEY. Mr. Chairman, as I understand clause 1 of rule XIV of the rules of the House, we are supposed to debate the subject of the amendment that is before us. It seems to me most of these gentlemen are debating the next amendment and not this amendment. I would like to ask the Chair if that is correct and if we should refrain from that.

The CHAIRMAN. Members must confine their remarks to the pending amendment that is before the Committee.
Frankly I was outraged when President Clinton issued that executive order revoking President Reagan’s historic executive order on federalism issued in 1987. President Reagan’s executive order provided many protections for a governmental change from State to local governments.

By stark contrast, President Clinton’s new executive order, issued without prior consultation with State and local governments, betrays and repudiates an 11-year tradition of trust and mutual respect between the States and the executive branch. In its place, the order laid out the groundwork for an unprecedented Federal power grab in virtually every area of policy previously reserved to the States under the 10th Amendment.

On June 8, I wrote to President Clinton that “I could not understand how you, as a former governor, could willingly abandon the protections accorded the States since 1987 from unwarranted federal regulatory burdens.”

Then on June 10 my subcommittee called the National Governors’ Association for a view of the new executive order. Shockingly, their Executive Director was totally unaware that this order had been issued. They learned about it first from Members of Congress, not the White House. Apparently the Clinton-Gore White House has neither consulted with any of the principal State and local government interest groups prior to issuing this order, nor notified them about it after it had been issued.

On July 17 the leadership of the Big 7 requested that the President revoke this executive order. As the gentleman from Massachusetts (Mr. FRANK) has pointed out, he has done that today. What I think is important is that we make it very clear that the trust that had been built up is no longer there, that this President, quite frankly, does not have that credibility with the State and local officials because of that stealthy action to revoke that provision.

Now I think it is the height of irony, frankly, that the President while out of the country issued an order that reversed that 11-year commitment with no advanced notice, no opportunity to comment, no voice for the States in the decision that will drastically upset the constitutional balance of power between the States and the Executive Branch.

On July 28 I chaired a hearing to examine first the potential impacts of the new executive order, and second, the need for possible legislation to address the concerns of the State and local government. This hearing allowed the States and elected officials to voice their concern and former and current administration officials to express their rationales for the federal executive orders. Quite frankly, the State and local officials were, let us say, at least as perturbed with Congress as they were with the Executive Branch for our failure to be consistent in respecting federalism.

Now on July 30 I again wrote the President as a result of that hearing and Mr. DeSève, saying that they should not go ahead with a new executive order, which is based on the Reagan executive order, asking him to definitively withdraw that, and I understand through news reports that today he has done so and suspended Executive Order 13083.

But I think the Kolbe amendment is absolutely necessary to make it clear that the agencies cannot spend any funds pursuant to that executive order or any executive order that does not fully defer to the States. So I want to commend the gentleman for offering this amendment.

Mr. Chairman, I yield the remainder of my time to the gentleman from Virginia (Mr. BLILEY), chairman of the Committee on Commerce.

Mr. BLILEY. Mr. Chairman, I wanted to make it clear that I oppose affirmative action. I think it divides us rather than brings us together. I oppose any effort to add sexual orientation as a protected class under the Federal affirmative action.

That being said, I unequivocally oppose discrimination. When I hire someone in my office, I do not ask the prospective employee their sexual orientation.

Mr. HEFLEY. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. HEFLEY. Mr. Chairman, I believe the gentleman is debating the next amendment, not this amendment. My parliamentary inquiry is, Mr. Chairman, that I believe the gentleman is debating the next amendment, not the federalism amendment. We have federalism in the next amendment, but he is debating a part of the amendment that will follow this one.

The CHAIRMAN. The Chair asks Members to confine their remarks to the amendment at hand.

Mr. BLILEY. Mr. Chairman, I am sorry the gentleman rose to that, but it does not alter my feelings whatsoever. I think his amendment is a mistake, and I would hope that all Members would oppose it.

Mr. Chairman, this is ill considered. It is a mistake.

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

I would like to thank the gentleman from Arizona (Mr. Kolb) for bringing up this amendment. I may not agree with all the arguments that have been put forward thus far, but we are talking about in the next amendment, and I am not going to be going to the actual substance of that amendment but rather the rights that that amendment is going to be debated; we are going to be talking about two extraordinarily complex issues: federalism, which is the issue that probably more than any other issue got me here back in 1994, and outside my door I have a copy of the 10th Amendment written. We could talk for hours and hours about a billion different issues relating to the Clinton executive order, to the 10th Amendment, and the constitutional ramifications of that executive order, and we can spend as many hours talking about an issue that will continue to follow everybody in this Chamber for as long as we live, and this is the rights of homosexuals in American civilization. Those two debates are as contentious as any debates that we could bring up, and for a rule to be drafted that would require us to speak on the rights of homosexuals in State and national, is formalized federalism in 20 minutes is absolutely not shocking, but it is a joke.

The gentleman from Massachusetts (Mr. FRANK) said earlier, was talking about how many times this has been killed, and he talked about it. He said he did not think that Rasputin had been shot and killed as many times as this executive order. I concur, but I would like to kick it one more time just for the heck of it. It was put to death earlier today.

The gentleman from Indiana (Mr. MCINTOSH) had some hearings on the issue, we had some fascinating testimony on it, and most of the people agreed that reversing Ronald Reagan’s Executive Order in 1987, and again the President’s Executive Order in 1993, was dangerous. The Reagan Executive Order stated that the constitutional relationship among sovereign States, State and national, is formalized and protected by the 10th Amendment to the Constitution. But this is what some of the State and local officials said about the President’s Executive Order.

Mike Leavitt, the Executive Committee Chairman of the National Governors’ Association, said, “Executive Order 13083 repudiates the masterful wisdom of our founders and is now inconsistent with the United States Constitution. The Congress should not assist or applaud that course.”

The North Carolina State Representative, Daniel Blue, the President of the National Conference of State Legislatures, said, “Executive Order 13083 must be revoked.

Democratic Mayor Edward Rendell from Philadelphia, the Chairman of the U.S. Conference of Mayors, said it is essential that federalism policy reflect a proper balance of authority be developed in cooperation with and supported by the State and local governments. The President of the National League of Cities concurred and said we join in our request to withdraw the order.

Executive Order 13083 on federalism, and jointly the Conference wrote a letter to the President, and said:

“We believe it is especially critical for you to consider and act upon our request to withdraw the order as quickly as possible.”

That came out in our hearing in the McIntosh subcommittee and I thank

H7250 CONGRESSIONAL RECORD – HOUSE August 5, 1998
the President today from the House floor for rescinding that order. I think it was an important thing to do, and I hope over the next 90 days, as he talks to State and local officials, that he will pay special attention to their concerns and then we can recognize the need for reinstating the Reagan Executive Order in 1987 and also reinstating his order in 1993.

Mr. Chairman, I thank the gentleman from Arizona (Mr. KOLBE) for bringing this very important amendment to the floor.

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

We have not seen the stroke of the pen yet that Paul Begala spoke about. Mr. Chairman. Recently Clinton political adviser, Mr. Paul Begala, was quoted as saying, and I quote these immortal words: Stroke of the pen, law of the land, kind of cool, close quote. Yes, that is really cool.

Mr. Chairman, we have heard a lot of talk over the last few days, including right here on the floor, that champagne bottles are being cracked open because the President has stroked that pen over there and made a new law of the land. I am going to reserve judgment, Mr. Chairman. I "ain't" breaking my bottle of champagne open yet, not with the track record of this administration.

The only way that an executive order can be rescinded or altered or mended in any way, including its operative date, which in the case of Executive Order 13083 is August 12 of this year, is by another executive order or by legislation. Now until we see that dried ink on the new executive order which re-scinds Executive Order 13083, Executive Order 13083 remains operative.

So I think that this amendment offered by the gentleman from Arizona this afternoon is much more relevant, very much on point, very much apropos and ought to go forward. It sends not only an important message, as several of the speakers have already said, to let the White House know that at least here in the halls of this Congress the 10th Amendment does have some meaning. It also, I believe, Mr. Chairman, is very important because it will stop funding for this executive order if, in fact, that pen that Mr. Begala loves so much is hesitated at the last moment. We will see.

I would also like to urge my colleagues to take a close look at Executive Order 13083 and note the nine categories, count them, nine, categories of activities of State, Federal, State and local government that will be swept away by that stroke of the pen that Mr. Begala thinks is just oh so cool.

The list of activities of which this executive order purports to give jurisdiction to the Federal government on its own as opposed to anything of which it purports to give a Federal agency or department jurisdiction, including if there is some ill-defined or perhaps even not defined international obligation. It goes far beyond even the expansion of reading of the Interstate Commerce Clause of the Constitution which has provided the basis for so much Federal intrusion in the lives of our citizens, our schools, our businesses, our local governments and our State governments. It simply says as the A-No. 1 reason why Federal agencies or departments may supersede State or local action, quote, when the matter to be addressed by Federal action occurs inter-state as opposed to being contained within one State's boundaries, close quote. Do not even have to have the commerce nexus.

One can go on and see how expansive and indeed how expansive and indeed how frightening this executive order is, and it is because of that scope, that breathtaking scope of this executive order, why it is important this evening to go on record to say that we in the Congress continue to believe in the Constitution and continue to believe in separation of powers, we continue to believe in the 10th Amendment, and until we see, until we see the actual signature, we will not rest and we should not rest. We must be vigilant. It will be kind of cool if that happens, but let us wait and see.

Mr. Chairman, I urge adoption of the amendment offered by the gentleman from Arizona (Mr. KOLBE).

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

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Arizona (Mr. KOLBE), and I want to take this opportunity to speak against another version of this amendment that may soon be offered to also overturn the executive order regarding discrimination in the Federal workplace.

At the heart of the debate over Executive Order 13087 is one of the most basic rights in any civil society, to be judged in the workplace on the content of one's character, not on one's race, religion, gender or sexual orientation. Mr. Chairman, this is a question of civil rights, not special rights, and the sad truth is that the radical right cannot tolerate a society in which all Americans are afforded the same basic rights.
The history of the United States is a history of the expansion of the definition of that phrase, that all men are created equal. In 1776 that did not mean women, did not mean black people, did not mean Native Americans, did not mean anyone other than white males. We have spent 200 years expanding that definition. Before the Civil War and the Civil Rights Act of 1964, race and color were the only group which someone can still stand up and say, without being ridiculed off the stage, is not included in the definition of equality are people of different sexual orientation, are gays and lesbians and transgender individuals.

Mr. Chairman, it is imperative that we begin the process of expanding the promise of the Declaration of Independence to include the last uninccluded group, gays and lesbians and transgender people. I think the American promise of equality. It makes sense, if someone is qualified to do a job, he or she should not be denied a job based on irrelevant factors.

More than half of the Fortune 500 companies and most Members of Congress already have their own policies to prevent discrimination based upon sexual orientation. It is about time that the Federal Government as a whole follows suit. That is the position of the Clinton administration, and after we deal with discrimination in employment, then we will deal with discrimination in public accommodation, housing and other things. Right now it is elemental that this executive order is the least thing to do.

So I urge that the amendment be defeated. The President should be condemned for the executive order. I urge my colleagues to reject the Hefley amendment.

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

Mr. Chairman, I want to compliment the gentleman from Arizona for offering this amendment. While I cannot support it, I appreciate his effort to ensure that Members have the opportunity to vote on the federalism issue alone, so that when the debate comes in the next amendment, the amendment of the gentleman from Colorado. Mr. Chairman, I recognize that particular debate, because it is my understanding that the Hefley amendment was rewritten at the last moment to also prohibit implementation of the executive order on federalism but it really was about Federalism, it was about discrimination, as both the gentleman from California and my friend and colleague from Massachusetts have already gone over. Under the executive order no more requires affirmative action based on sexual orientation than the original executive order that it amends, which, by the way, was promulgated by President Nixon in 1969, requiring affirmative action based on race, religion, gender, age or disability.

Not once has the gentleman from Massachusetts stated that the executive order that was issued in 1969 by President Nixon has ever been interpreted to require affirmative action or to confer special rights of any kind. These arguments, if they are made, are, at best, disingenuous.

This amendment to the Nixon executive order simply extends protection from discrimination to hiring, firing and promotion to gay men and women if you work for the Federal Government. Nothing more, nothing else.

Basically it means that Federal agencies must be fair in their employment practices. It is only about fairness, and insisting that the Federal Government, the executive branch, treat everyone the same, that is, on the merits.

One would suggest that amendment to the Nixon executive order is unnecessary, that gay men and women do not need to be protected in the workplace. I submit that is wrong. Look at this Chamber. Approximately 190 Members of this body declined to sign a pledge that sexual orientation is not and would not be a consideration in the employment practices in their congressional offices. Let us start there.

For many gay Americans, losing a job is the least of it. Some statistics to reflect on, if you believe men and women are not discriminated against. In 1995, 29 men and women were murder victims either because they were gay, or some thugs at least thought they were gay. In 1996, the FBI reported over 1,000 hate crimes motivated by sexual orientation.

The evidence is clear, unequivocal and overwhelming: Discrimination against gay men and women exists in our society. Let us remember, when a person is denied his or her opportunity because of discrimination, we all lose. We lose the benefits that we might have gained from that individual's services. And, even more importantly, when we tolerate discrimination against anyone or any group, we are diminished as a society and as a Nation, and this Chamber ought not to be about division and discrimination.

So I would submit we are simply better than that. Let us prove it tonight. Let us defeat the Kolbe amendment and the Hefley amendment.

Mr. ROGERS. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments...
August 5, 1998

CONGRESSIONAL RECORD – HOUSE H7253

thereto close in 15 minutes, and that the time be equally divided.

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

There was no objection.

The CHAIRMAN. The gentleman for yielding me the time.

Mr. KUCINICH. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. KUCINICH. Mr. Chairman, does this relate solely to Kolbe amendment? The Executive Order 13083 is concerned with hate crimes. Is that correct?

Mr. KUCINICH. And not the Hefley amendment or any other amendment?

The CHAIRMAN. This relates to just the Kolbe amendment at hand.

The gentleman from Arizona (Mr. KOLBE) will control 7½ minutes and a Member in opposition will control 7½ minutes.

The Chair recognizes the gentleman from Arizona (Mr. KOLBE).

Mr. KOLBE. Mr. Chairman, I yield 2 minutes to the gentlewoman from Connecticut (Mr. SHAYS).

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Mr. SHAYS. Mr. Chairman, I rise in support of the Kolbe amendment, which prohibits funds from being spent to implement the President’s Executive Order 13083 on federalism.

I rise to support this amendment because I believe that this President’s Executive Order should be repealed. This amendment also gives us the option to oppose the Hefley amendment, which repeals both Executive Order 13083 on federalism and the Executive Order on nondiscrimination based on sexual orientation, 13087.

Therefore, I support the Kolbe amendment and I oppose the Hefley amendment, because the Hefley amendment does more than the Kolbe amendment. It repeals the Executive Order on nondiscrimination based on sexual orientation, 13087.

I do not believe we should discriminate. I do not believe we should discriminate based on someone’s sexual preference. I think it is irrelevant, I think it is wrong, and I speak strongly in my outrage that some on my side of the aisle, my leaders in particular, have sought to make this a political issue.

The CHAIRMAN. Does the gentleman from West Virginia (Mr. MOLLOHAN) seek time in opposition to this amendment?

Mr. MOLLOHAN. Yes, I do, Mr. Chairman.

The CHAIRMAN. The gentleman from West Virginia (Mr. MOLLOHAN) is recognized for 7 minutes.

Mr. MOLLOHAN. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. OLVER).

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

Mr. Chairman, I rise in support of the Kolbe amendment and in opposition to the Hefley amendment which follows, which contains the material of the Kolbe amendment but also goes beyond that material.

In the difference between the two, the Hefley amendment is an attack upon all our friends in the gay and lesbian community. The Hefley amendment is one more example of unabashed homophobia on the part of some Members of this body.

Nondiscrimination in the workplace for gays and lesbians is fundamental. Yet, under current law it is perfectly legal to fire a person from their job in 40 States because of their sexual orientation, and that alone. No person should have their work judged or their opportunity to work denied on the basis of anything but their ability to successfully perform their job.

We should not be misled that nondiscrimination in civilian Federal employment for gays and lesbians is somehow granting special or unique rights. Nondiscrimination in employment for Americans, regardless of race, color, religion, ethnicity, gender, handicap, age. Those are not special or unique rights, they are fundamental. Job performance and job performance alone should be the measure of success in civil service.

By adopting the Hefley amendment, which would deny gays and lesbians the nondiscrimination policy afforded to everyone else, this House would deliberately encourage job discrimination against gays and lesbians.

History has been unkind, Mr. Chairman, to those who have tried to stop the march towards equality. All of us have family, friends, or acquaintances who are gay. They are Republicans or Democrats, doctors and lawyers, teachers and corporate CEOs, our brothers and sisters, our daughters and sons.

To those who insist on continuing job discrimination against the gay community, I urge them, do not be on the wrong side of history. Let us defeat the Hefley amendment. Vote no on the Hefley amendment and for the Kolbe amendment.

Mr. KOLBE. Mr. Chairman, I yield 2 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Chairman, I thank the gentleman from Arizona for yielding time to me, and I rise in strong support of his amendment to prohibit the implementation of Executive Order 13083, which is an extraordinary extension of Federal authority, and an order developed without any collaboration with the States for the purposes of governing Federal-State relations. There is certainly a better way to do it, a better process and a better outcome, and I rise in strong support of the Kolbe amendment.

I also appreciate the fact that the Kolbe amendment is focused on federal contractors or companies who are in the top 500 include Federal with order 13087. As the chief executive of the Federal civilian work force, it is absolutely within the President’s responsibility to make clear that the Federal Government does not discriminate on the basis of sexual orientation.

I voted for welfare reform because I believe work is a healthy, responsible, fulfilling, and necessary commitment in life. Why should Republicans, who fought so hard to open up work for welfare recipients, now vote to deny work to a dedicated, capable, high quality person because of that person’s personal, private choice regarding friends and partners?

Have Members ever sat and visited with the parents of a gay and lesbian young person? They will tell you, they loved their baby. They cared for their child. They have saved their money and educated their daughter or son, and they are proud that their child is a good, effective worker. All they are asking of government is that we not allow an employer to arbitrarily fire or arbitrarily deny a promotion to someone who is working hard and doing a good job.

We certainly owe at least that much, equal opportunity, to every American. Mr. MOLLOHAN. Mr. Chairman, I have accepted the responsibility to manage this time technically in opposition to the Kolbe amendment. I am not in opposition to the Kolbe amendment, and if there is somebody now who would like to manage the time, who is against the Kolbe amendment, I would certainly yield this time to them.

The CHAIRMAN. Does the gentleman from West Virginia (Mr. MOLLOHAN) ask unanimous consent to control the time in opposition?

Mr. MOLLOHAN. Mr. Chairman, I ask unanimous consent to control the time in opposition to the amendment.

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

There was no objection.

Mr. MOLLOHAN. Mr. Chairman, I yield 1½ minutes to the gentleman from New York (Mr. MALONEY).

Mrs. MALONEY of New York. Mr. Chairman, I rise in opposition to the Kolbe and Hefley amendment. The United States is an inclusive country. It is built upon the thoughts, beliefs, practices, of many countries. I am almost embarrassed that any Member of Congress would attempt such a slap in the face against any one segment of the American population.

Do gay people not pay taxes? Do gay people not participate in this Nation’s economic growth? Do gay people not make creative, intelligent, thoughtful, and important contributions to America as a whole? Why would we then single them out as a particular group not worthy of common courtesy, decency, and fairness?

Two hundred and forty-five Members of this House and 65 Senators have in place proper nondiscrimination policies. Why should Fairfield, who companies have similar policies in place. The Federal Government should not be the exception. In fact, it should be setting the right example.
No one is asking for any special privileges, quotas, or preferences. The President's Executive Order asks only for basic human rights for everyone. It simply clarifies existing non-discrimination policies of Federal agencies and offices. I urge a no vote against both amendments.

Mr. KOLBE. Mr. Chairman, I yield 1 minute to the gentleman from Florida (Mr. STEARNS).

Mr. STEARNS. Mr. Chairman, I thank my colleague for yielding time to me.

Mr. Chairman, on September 18, 1996, President Clinton sat on the South Side of the Grand Canyon in Arizona, where he commandeered 1.7 million acres in Utah. The citizens and elected officials of Utah were shocked, without any advance notice and without asking for input, that the President took away a whole chunk of land the size of Delaware and Rhode Island.

Frankly, Mr. Chairman, the White House is expanding its powers throughout the Nation at the expense of State and local governments. So I think what the gentleman from Arizona (Mr. Kolbe) is trying to do is prohibitive, through his amendment, the execution of Executive Order 13087.

For those who keep talking about the Hefley amendment, this has nothing to do with the Hefley amendment. I appreciate what they are trying to do. Frankly, I support the Hefley amendment. I support the Kolbe amendment, and also believe that the President has to realize that all the Governors do not support what he is doing, either through his Executive Orders. We will have to wait to see if he is actually going to rescind these Executive Orders or not.

I stand up in support of the Kolbe amendment and in support of the Hefley amendment.

Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 1 minute to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished chairman for yielding me the time.

I rise to oppose both amendments pending here on the floor of the House. I ask my friend, the gentleman from Colorado (Mr. HFLEY), does he discriminate, and would he be willing to acknowledge under oath or on the floor of the House that it is not support that he is willingly and openly discriminating? Would he ask the President of the United States to openly and willingly discriminate against people within the boundaries of this Nation?

This is a ludicrous and outrageous discussion that we are having today. Flying in the face of equality and opportunity, we want to deny those who are gays and lesbians the rights to a simple job. I would like the gentleman from Colorado (Mr. HFLEY) to travel with me and meet with the organization P-FLAG, Parents of Gays and Lesbians; parents who work every day, who simply want for their children the dreams and aspirations of the Declaration of Independence, that says we are all created equal, with certain inalienable rights of life, liberty, and the pursuit of happiness.

Seventy-two percent of our Nation's citizens that were polled in the Wall Street Journal, President Clinton's anti-gay bias in Federal agencies, which simply means, you cannot be fired.

In 1997 the American Psychological Association reported that many employers openly admit they would discriminate against sexual employee. I just a couple of weeks ago I held in my district a hearing on the Hate Crimes Prevention Act. The outpouring of tears and hurt that was evidenced by those who experienced in the gay and lesbian community outright hatred and discrimination, outright violence; the actual pain of a man who was not gay, who was perceived to be gay, who was beaten brutally; the absolute violence against someone in my district who went into a bar to have a simple, friendly drink, and he was beaten to death. So we are not talking, Mr. Chairman, about giving away the store. I imagine it is equal to the debate we had on the 13th and 14th Amendment in the 1860's. I wonder if I had been a simple fly on the wall, what someone would have said about African-Americans not being freed in this country. This is a disgrace on America, it is a disgrace on this flag, and both of these amendments should be defeated.

Mr. MOLLOHAN. Mr. Chairman, I yield 1 minute to the distinguished gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, I rise today to speak in strong opposition to any amendment which would pave the way for continued discrimination against gay and lesbian Federal employees.

When President Clinton passed Executive Order 13087, he did so with the support of the vast majority of Americans who believe, as I do, that an employer should not be allowed to fire gay and lesbian employees simply because of their sexual orientation. Nonetheless, some in America have worked hard to prevent gays and lesbians from receiving the same basic protections that most Americans enjoy and take for granted.

As a black woman who was forbidden from enrolling in public schools because of the color of my skin, I am especially troubled to witness this divisive, unfair, and un-American attack on the civil rights of our fellow citizens and our constituents. Gay and lesbian Americans is totally legal. Right now it is legal to discriminate against gays and lesbians in 40 of our States.

Mr. Chairman, I encourage all of my fair-minded colleagues to stand on the right side of history.

Mr. MOLLOHAN. Mr. Chairman, I am pleased to yield 1 minute to the distinguished gentleman from Massachusetts (Mr. FRANK).

Mr. MEEHAN. Mr. Chairman, I want to speak to an issue of individual liberty, an issue at the heart of the amendment offered by my friend, the gentleman from Arizona (Mr. Kolbe). Specifically, I want to talk about the liberty to pursue any field of employment at which one excels.

Some people around here seem to believe that this liberty should not exist with respect to gays, lesbians and bisexuals. This belief is so misguided, so contrary to our Nation's ideals, and so outside the mainstream, that its proponents have felt the need to justify it with untruth after red herring after misrepresentation.

We hear that forbidding discrimination against Federal civilian workers on the basis of their sexual orientation grants special rights to homosexuals. We hear that forbidding such discrimination protects misconduct on the job. I half expect to soon hear that protecting gays and lesbians from discrimination in the workplace is responsible for global warming and ethnic conflict in the Middle East. All of these claims are designed to distract us from the key question at hand.

Mr. MEEHAN. Mr. Chairman, I want myself the balance of my time.

Mr. Chairman, a couple of things that I want to clarify. Earlier the gentleman from Florida (Mr. FRANK) referred to the amendment offered by the gentleman from Florida (Mr. SCARBOROUGH). That amendment was offered last week on VA-HUD dealing with the Federalism issue. That was absolutely correct.

The gentleman from Massachusetts went on to say how this is a stake through the heart, that we are going to drive it through again and again and again.

There is a difference between what was offered last week and this one. My amendment makes it clear that no funds in this or any other act; while the amendment last week applied only to the single bill under consideration—VA-HUD—this applies to any acts that are appropriated in any act. So this really does cover the whole issue of Federalism. It puts it to rest once and for all.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. KOLBE. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I thank the gentleman for
I urge an "aye" vote on the amendment.

The CHAIRMAN pro tempore (Mr. PEASE). The question is on the amendment offered by gentleman from Arizona (Mr. KOLBE).

Mr. MOLLOHAN. Mr. Speaker, could we see a copy of the modified amendment?

Mr. ROGERS. Mr. Speaker, it is being delivered to the gentleman as I speak.

Mr. MOLLOHAN. Mr. Speaker, continuing my reservation of objection, we have just had an opportunity to look at this. It is considerably different than previous versions. We would like an opportunity to reserve judgment on this amendment and this UC, pending a review.

If the gentleman wants to move forward quickly on the UC, maybe we can pull this out, look at it and deal with this in a few minutes. I would like back to it as soon as we have a chance to review it, which we have not had a chance to do.

Mr. ROGERS. Mr. Speaker, the only difficulty is, this must be done in the full House, which we will not be in shortly.

Mr. MOLLOHAN. Mr. Speaker, as we move forward on this or at the time we get to it, perhaps we can make an agreement.

Mr. ROGERS. I would point out to the gentleman, we are under an open rule.

Mr. MOLLOHAN. Mr. Speaker, I fully appreciate that, but I am having expressions of concern by Members who are interested in this amendment. I think we can resolve it and agree to it when we get down to it. I just cannot include that in the UC right now.

Mr. ROGERS. Mr. Speaker, if the gentleman will continue to yield, what I am asking is, could the gentleman agree that whatever the amendment is, that the time limit would be 20 minutes at the UC states?

Mr. MOLLOHAN. No, Mr. Speaker, I cannot. I understand the proposal, and I simply suggest to the gentleman that until Members who have an interest in this have an opportunity to review it, I cannot agree to the time limit as set forth in the UC. We could break that out and when we get down to it, I am sure we could work something out for Members who are interested in the amendment.

Mr. ROGERS. Mr. Speaker, I would withdraw the unanimous consent request until a further time, but while we are in the full House, could I propose that the debate on the Hefley amendment be limited to 20 minutes?

Mr. MOLLOHAN. I believe it is limited under the rule, Mr. Speaker.

THE SPEAKER pro tempore. The Hefley amendment already is 20 minutes under the rule.

Does the gentleman withdraw his request?

Mr. ROGERS. Mr. Speaker, I would withdraw the unanimous consent request.

Mr. MOLLOHAN. Mr. Speaker, I withdraw my reservation of objection.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, AND JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

The SPEAKER pro tempore. Pursuant to House Resolution 508 and rule...