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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. LAHOOD).

DESIGNATION OF THE SPEAKER PRO TEMPORE

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

WASHINGTON, DC,
July 24, 2002.

I hereby appoint the Honorable RAY LAHOOD to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Reverend Samer Youssef, Antiochian Orthodox Church of the Redeemer, Los Altos Hills, California, offered the following prayer:

O God, who miraculously revealed Your teaching that evil cannot be overcome except by good, in the preserved pages of the Scriptures recovered from the arsonist-burned Antiochian Orthodox Church of the Redeemer in Los Altos Hills, California, on April 7, 2002, where we read: ''You have heard an eye for an eye and a tooth for a tooth, but I say to you do not resist the one who is evil, but if anyone strikes you on your right cheek, turn to him the other also.''

I beseech You, O Lord, on behalf of these Your servants who are gathered here together under Your divine authority, the Members of this House of Representatives, to guide them in all goodness and righteousness for the welfare of this Nation. Bestow Your grace, wisdom, and strength upon them. Protect them at all times. Enlighten their hearts and minds to be instruments of Your love and compassion in leading this great Nation as it seeks to offer Your principles of peace and justice to the entire world; now and ever and unto ages of ages. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from South Carolina (Mr. WILSON) come forward and lead the House in the Pledge of Allegiance.

Mr. WILSON of South Carolina led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain one 1-minute to be given by the gentlewoman from California (Ms. ESHOO), who represents the guest chaplain.

The Chair will entertain ten 1-minutes on each side following the suspension vote.

TRIBUTE TO FATHER SAMER YOUSSEF

(Ms. ESHOO asked and was given permission to address the House for 1 minute.)

Ms. ESHOO. Mr. Speaker, this morning the House of Representatives welcomes Father Samer Youssef, who has come here from California, from my congressional district in Northern California in the heart of the Silicon Valley.

On April 7, a tragedy befell our community and the Parish of the Church of the Redeemer in Los Altos Hills, the Antiochian Church. An arsonist set fire to that magnificent church, and it burned to the ground. But Father Youssef and the entire Parish, together with our entire community, firefighters, the sheriff's department, churches, the temple, the Catholic Church came together to heal and his leadership is healing. His leadership has spoken to the magnificence of the great principles of America, that we believe in justice but more importantly or just as importantly we believe in one another.

And so we have come past this tragedy in our community. Together people from throughout our congressional district have placed contributions at the table to not only rebuild the church through their good faith and their contributions but to send a signal to people across our country and across the world that no arsonist, that no one who tries to terrorize our community will win. We are stronger, we are better, we are faith filled because of Who and what we believe in.

So I thank Father Youssef for coming to Washington. I thank him for his faith and leadership, and I thank my colleagues for his warm welcome, to not only the father but to his magnificent family who is seated in the gallery. And we can hear his son's approval, his 18-month-old son's approval.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair reminds Members not to refer to people in the gallery.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to make an announcement.

On July 24, 1998, at 3:40 p.m., Officer Jacob J. Chestnut and Detective John M. Gibson of the United States Capitol

Printed on recycled paper.

Police were killed in the line of duty defending the Capitol against an intruder armed with a gun.

At 3:40 p.m. today, the Chair will recognize the anniversary of this tragedy by observing a moment of silence in their memory.

COST OF WAR AGAINST TERRORISM AUTHORIZATION ACT OF 2002

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 4547, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. HUNTER) that the House suspend the rules and pass the bill, H.R. 4547, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 413, nays 3, not voting 18, as follows:

[Roll No. 335]

YEAS—413

Abercrombie
Ackerman
Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clayton
Clement
Clyburn
Coble
Collins
Combest
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn

NAYS—3

Kucinich
Lee
McKinney

NOT VOTING—18

Bishop
Bonior
Burton
Clay
Condit
Ehrlich
Engel
Hall (OH)
Johnson, Sam
Kaptur
Lipinski
Meek (FL)
Paul
Platts
Stearns
Traficant
Young (AK)
Young (FL)

□ 1032

Messrs. ROYCE, JACKSON of Illinois, and CAMP changed their vote from ''nay'' to ''yea.''

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REMEMBERING OFFICER CHESTNUT AND DETECTIVE GIBSON

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

Mr. DELAY. Mr. Speaker, another year has passed since we lost our dear friends, Officer J.J. Chestnut and Detective John Gibson. They were struck down as they stood tall for everyone that works in this building that we love so deeply.

This past year brought forth a renewed appreciation across America for the virtues that both of these men showed all of us 4 years ago: bravery, fortitude, tenacity, and commitment. Officer Chestnut and Detective Gibson inspired all of us with unflinching devotion.

They now stand at the proud formation of the New York firefighters and police officers and the soldiers and sailors that also died saving lives on September 11.

Mr. Speaker, Churchill once said, ''Courage is rightly esteemed the first of human qualities because it is the quality which guarantees all others.''

The courage of citizens like J.J. Chestnut and John Gibson has always been and will always be the true, firm foundation of American democracy.

The willingness of millions of Americans to place themselves between danger and freedom over the years has always been the most powerful natural force for change in history.

Some may have thought that our sense of gratitude and our love for these men would have been dimmed with the passage of time, but the opposite is true. We are now even more sharply aware of the danger present in our world and the enormous debt we owe the men and women who protect us.

Our hearts and our prayers go out to the families of Officer J.J. Chestnut and Detective John Gibson. They can be certain that we will always cherish the memories of their loved ones, we will always remember their sacrifice, and we will always defend the freedom that they loved.

COMMEMORATING DELTA SIGMA THETA SORORITY, INC.

(Mrs. JONES of Ohio asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. JONES of Ohio. Mr. Speaker, I would like to join with my colleague, the gentleman from Texas (Mr. DELAY), today as we memorialize the loss of Officer Chestnut and Detective Gibson on behalf of the whole House, and I speak on behalf of the Democratic side as well.

I rise this morning, Mr. Speaker, to commemorate my sorority, Delta

Sigma Theta Sorority, Inc., that is celebrating its annual convention in Atlanta, Georgia. I am proud to be a member of that sorority that hosts more than 200,000 members across this country and internationally, women who have graduated from colleges all over this world. We are not only a sorority in the sense that people talk about sororities, but we are a national service sorority, having been involved in many projects throughout this country to raise the level of consciousness of women and folk across the country.

So I just want to celebrate the President of our organization, Gwendelynn Boyd, and all of our other national members, and the immediate past president, Marsha Fudge, now the mayor of the city of Warrensville Heights, Ohio.

RECOGNIZING AND COMMENDING THE BRAVERY AND COURAGE OF TERESA JACOBO

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

Mr. GIBBONS. Mr. Speaker, today I rise to recognize and commend the bravery of a young, 10-year-old girl from Elko, Nevada.

Teresa Jacobo's quick thinking and courage saved her family possibly from death or injury from a House fire last week.

Last Wednesday morning, young Teresa immediately called the fire department and 911 when she heard the smoke detector go off and woke her up in her room. She then woke up her family to alert them to danger.

Elko Fire Marshal Dave Greenan said Teresa's ''actions prevented what could have been a true disaster.''

The young girl has been recognized by the Elko Fire Department for her actions, and I too would like to echo their sentiment.

It is my hope that all children would react so bravely to such a situation.

Like the firefighters that responded to her call, Teresa represents the best of the American spirit, and she probably never even thought twice about doing what she did.

Thank you, Teresa. You not only saved your family, but you made Nevada proud.

RECOGNITION IN THE SAMANTHA RUNNION CASE

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

Ms. SANCHEZ. Mr. Speaker, I rise to recognize the tireless efforts of the Orange County Sheriff's Department, the Riverside County Sheriff's Department, the FBI, and the numerous local law enforcement agencies who contributed to a prompt arrest last week in one of the largest manhunts in Orange County's history.

Tragically, 5-year-old Samantha Runnion's body was found last Tuesday, a day after she was abducted from her apartment complex.

Four minutes after Samantha's kidnapping was reported, an Orange County Sheriff'S Deputy was right there on the scene. A county-wide alert was sounded within 10 minutes, and the Child Abduction Regional Emergency Signal went out within the hour, allowing local radio stations to broadcast a description of the kidnapper.

When Samantha's body was found, 400 FBI and Orange County investigators responded to the scene, collecting physical evidence and following up on over 2,000 tips they received from the public. This investigation led to the arrest of a key suspect in Samantha's murder just 4 days after she was reported missing. The Orange County Sheriff's Department remains dedicated to this investigation until a conviction in this case.

Law enforcement and the local community in Orange County have delivered a strong message in this case: Samantha's death and other such horrendous crimes will not be tolerated in our community.

CONGRATULATING SANDRA PEEBLES

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

Ms. ROS-LEHTINEN. Mr. Speaker, I am proud to congratulate Sandra Peebles, a constituent of my congressional district, for her support of the Leukemia and Lymphoma Society in its fight to find a cure for these deadly diseases.

Susan became involved with the society's team and training with the goal of completing a 13-mile marathon by September 1.

Leukemia is the number one killer of children under the age of 15; and with the commitment of individuals like Susan, however, the cure for lymphoma and leukemia will one day become a reality.

Susan gets donations from concerned citizens as she runs her marathon on behalf of the Leukemia and Lymphoma Society.

I am proud to know generous and concerned individuals like Susan Peebles who give up their time for such a worthy cause. I ask my congressional colleagues to join me in congratulating Susan Peebles and the Leukemia and Lymphoma Society.

HONORING TIM MILLER AND MEMBERS OF THE TEXAS EQUUSEARCH MOUNTED SEARCH AND RECOVERY TEAM

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

Mr. LAMPSON. Mr. Speaker, I rise today to honor Tim Miller and the members of the Texas EquuSearch Mounted Search and Recovery Team.

The first official meeting of this organization was held in August of 2000; and since then, Texas EquuSearch has been on nearly 100 searches in 2 short years. They have an admirable record of working constructively with our Nation's local law enforcement and the Federal Bureau of Investigation; and right now, Tim and Texas EquuSearch are on still another search near their headquarters in Dickinson, Texas.

Texas EquuSearch stands for a great deal. Tim Miller founded the search team in loving memory of his 16-year-old daughter, Laura Miller, who was abducted and murdered in 1984. The success rate of Texas EquuSearch in finding our missing and returning many of them home alive to their loved ones is truly impressive and a living tribute to the spirit of Laura Miller. Her spirit is alive today in the heart of the Texas EquuSearch members and supporters.

Texas EquuSearch Mounted Search and Recovery Team searches for our Nation's missing and abducted children and adults.

Mr. Speaker, I rise today to applaud and to urge on Texas EquuSearch to continue forward in their mission, assuring that ''the lost are not alone.''

JOIN THE FIGHT AGAINST CORPORATE CORRUPTION

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

Mr. FOLEY. Mr. Speaker, last week I asked this body to consider immediately the Sarbanes bill. Thank God we had a conference committee, because our bill is actually now stronger than the Senate product, including more jail time, including forfeiture of ill-gotten gains.

Now, on the other side of the aisle, they have been asking for hearings; they have been talking about the Vice President and the President.

Let me suggest to them if they want to have good hearings, let us call Senator CORZINE who headed Goldman Sachs, and let us call Secretary Robert Rubin, the Clinton Secretary of the Treasury, who headed CitiGroup. When we talk about Enron, we ought to talk about all of the players.

There seems to be some real mischief. In fact, Goldman Sachs, Mr. CORZINE used $60 million to run for the Senate. Goldman Sachs was hyping Enron stock past $90. They encouraged people to buy it. So if we are going to have hearings, Mr. Speaker, let us have Goldman Sachs, let us have CitiGroup.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). The Chair would ask Members not to make references to sitting Senators in violation of the rules.

WEALTHY CORPORATIONS AVOID THEIR FAIR SHARE OF TAXES

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

Mr. STRICKLAND. Mr. Speaker, the American people need to know what is happening. Wealthy corporations are choosing to leave America, go to Bermuda, get a post office box, simply to avoid paying their fair share of taxes.

This is happening at a time when our colleague, the gentlewoman from Connecticut (Ms. DELAURO), tried to get an amendment to the Postal-Treasury appropriations bill that would say, if a corporation does this, they should not have access to lucrative Federal contracts. But the leadership in this House said oh, no, we cannot do that.

At a time when we are raising the cost of prescription drugs on our veterans from $2 to $7 a prescription, and at a time when the pension for wartime veterans' widows is a measly $534 a month, we are allowing wealthy corporations, in a time of war, to avoid their fair share of American taxes.

□ 1045

Who is going to pay those taxes? Are veterans?

BORN-ALIVE INFANTS PROTECTION ACT

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

Mr. SHIMKUS. Mr. Speaker, thank you, Jill Stanck. Jill is an obstetrical nurse at Christ Hospital in Illinois. After observing a child born alive after an abortion procedure and left to die, she became involved in righting this wrong through the legislative process, hence, the Born Alive Infant Protection Act.

On July 18 the other body voted unanimous consent to approve the Born Alive Infants Protection Act. The bill is now sent to the President for his signature. This bill passed both Chambers easily because we all felt, prolifers and those that are pro-choice, that infants who are born alive at any stage of development are individual human beings who are entitled to the full protection of the law.

Thanks to the work of Jill Stanck, the Concerned Women of America, Members of both the House and the Senate, and soon President Bush, a baby born alive will not be left to die in a hospital again.

CUBAN POLITICAL PRISONER DR. OSCAR ELIAS BISCET

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

Mr. DEUTSCH. Mr. Speaker, many of us here in this Chamber have adopted Cuban political prisoners in order to publicize their unjustified incarceration. We have done so in hopes of helping them to regain their freedom and shed light on the numerous injustices and human rights violations of the Castro regime in Cuba.

Mr. Speaker, it is my honor today to discuss my adopted Cuban prisoner, Dr. Oscar Biscet. Inspired by Gandhi and Dr. Martin Luther King, Dr. Biscet's nonviolent resistance to the Cuban government has received international attention. As president of the Lawton Foundation for Human Rights, Dr. Biscet was arrested 40 times in three months for his peaceful opposition and organizing activities.

In 1999, he carried out a 40-day prayer fast and organized schools on nonviolent tactics. This soft-spoken physician was condemned to 3 years in prison for hanging a Cuban flag upside down at a press conference.

Recognized by Amnesty International as a prisoner of conscience, Dr. Biscet has suffered through solitary confinement, torture, and an appalling lack of medical care. Still his faith in mankind endures, as he demonstrated when he told the policemen who were torturing him with lit cigarettes, God loves you.

Mr. Speaker, allowing for political dissent and debate is a fundamental reason why democracy adapts to, and represents the will of the people. I urge the Cuban government to listen to the will of its people, to end its continued human rights abuses, and to release Dr. Biscet and other political prisoners like him immediately.

COMMEMORATING INDIA'S INDEPENDENCE DAY

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

Mr. WILSON of South Carolina. Mr. Speaker, on August 15, 1947, India became an independent nation. Just as Americans look forward to their day of freedom every July 4, people of all faiths come together in India to celebrate a struggle for independence begun by Mahatma Gandhi.

Both America and India fought against British domination to secure freedom for their nations. People in both countries cherish the freedoms found in our respective constitutions, such as freedom of speech and freedom of religion. The framers of India's constitution were greatly influenced by the founding fathers of America, James Madison, Thomas Jefferson, John Adams and George Washington.

America is now the world's oldest parliamentary democracy and India the world's largest democracy. The future looks bright for both of our countries. We have grown closer since victory in the Cold War, and rightfully so since we share the same values. America and India should take action to boost our bilateral trade and must coordinate defense strategies to maintain stability in South Asia. Both America and India serve as models for democracy and freedom around the world. And our independence days are symbols of these achievements.

STOP THE VIOLENT OFFENDERS AGAINST CHILDREN DNA ACT OF 2002

(Ms. JACKSON-LEE of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, this Nation must express outrage about its murdered, abused and sexually violated children. Samantha Runnion, and Elizabeth Smart and Laura Ayala in my own district and Danielle Van Dam and Rilya Wilson out of Florida missing for a year. We must express our outrage.

Only 22 States in this Nation require of sex offender registries to keep DNA samples, the very materials that allow those very effective law enforcement in California to find the horrific alleged murderer of Samantha Runnion. That is why this week I will offer the Save Our Children, Stop the Violent Offenders Against Children DNA Act of 2002, that will instruct the Attorney General to hold a separate, free-standing DNA database for all sex offenders and offenders against children in this Nation.

We wish we did not have this kind of violence against our children, our most precious resources, but we should give every opportunity to our law enforcement to be able to find the perpetrator quickly and bring he or she to justice.

What an outrage, killing our babies, and no one standing up to say a word. We must have the ability to solve these crimes and stop these crimes.

DEPARTMENT OF HOMELAND SECURITY

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

Mr. RYUN of Kansas. Mr. Speaker, shortly after the events of September 11, we made a promise that we would fight the war on terror to its finish in order to ensure security of every American. Recognizing this, President Bush has outlined a plan to consolidate homeland security functions into the Department of Homeland Security.

The President warned us that making such a major change could be very contentious and this has been proven to be somewhat true. Some are afraid that the traditional missions not related to homeland security may not be adequately filled after restructuring. Others simply balk at the idea of leaving the status quo.

We must use every resource to ensure that the loss of innocent life does not occur again. To achieve that again, we will cut through bureaucracies and consolidate numerous agencies to ensure that future terrorist attacks are prevented.

Our best tool to accomplish this goal is to establish a Department of Homeland Security. Let us keep our promise to the American people.

WAR WITH IRAQ

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

Mr. KUCINICH. Mr. Speaker, last night the House passed a $28.9 billion supplemental appropriations bill, $14.5 billion of which was for military funding. Today the House has authorized another $10 billion for an undefined war on terrorism. Barely a day goes by where we do not see reports that the administration is in the advanced stages of planning a preemptive military strike against Iraq. H.R. 4547, the Cost of War Against Terrorism Authorization Act, would authorize over $480 million for chemical and biological defense as well as $598 million in funding for a Tomahawk missile conversion.

Is this military hardware needed in Afghanistan or are these funding priorities directed at preparing the United States for war with Iraq?

EXCELLENCE IN MILITARY SERVICE ACT

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

Mr. COBLE. Mr. Speaker, I rise today to introduce the Excellence in Military Service Act. This legislation would increase the active duty service obligation of military service academy graduates from 5 to 8 years.

This free and highly competitive college education costs the average taxpayer approximately $300,000 per cadet/midshipman.

As college tuitions continue to escalate, I believe our U.S. military academies will become even more attractive to prospective college students. In light of this fact, we need to ensure that a free education does not become a primary motivation for future applicants. I maintain that increasing the active duty service obligation is an effective way to accomplish this without jeopardizing the viability of these historic institutions.

I hope my colleagues will join with me in co-sponsoring this legislation, and I look forward to working with them to protect the U.S. taxpayers' investments and our Nation's future and ensure the integrity of one of our Nation's most precious resources.

CORPORATE REFORM

(Mrs. MALONEY of New York asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MALONEY of New York. Mr. Speaker, I rise in support of real corporate reform legislation and urge the conference committee to adopt the proposals put forth by Senator SARBANES.

Financial markets around the world are in a highly anxious mood, U.S. fiscal policy is plunging our country back into deficits, and the credibility of some of our most trusted companies' financial statements is undermined. This is no time to delay the establishment of fully independent oversight of the industry by a newly created public accounting board that is not under accounting industry control.

As the conference committee nears its completion, the funding for the new oversight board must not be used as a means of undermining its independence.

Senator SARBANES' legislation provides the board with funding from public companies as they are audited, a mechanism that separates the board funding from the accounting firms it will oversee and it protects its independence.

The Sarbanes legislation will not turn the markets around by itself but it will send a message to investors here and abroad that Congress is serious about removing the conflicts of interest.

MEDICARE MODERNIZATION AND PRESCRIPTION DRUG ACT OF 2002

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

Mr. LEWIS of Kentucky. Mr. Speaker, it is time to provide prescription drugs for our senior citizens. It is time to stop fussing and discussing and get down to business.

We just passed recently in this House a Medicare Modernization and Prescription Drug Act of 2002. This Act provides immediate relief from high drug costs with prescription drug discount cards and immediately implements a program to assist low income beneficiaries with their costs. It supplies significant front-end coverage of drug costs from government coverage. 80 percent paid on the first $1,000. It saves seniors more on their drug costs than any other bill in Congress. It lowers pharmaceutical manufacturing drug prices by $18 billion with best price provisions, offers catastrophic protection, 100 percent coverage after $3,700 in drug costs, and it covers all costs except nominal co-pays for low income seniors up to 175 percent of poverty.

Mr. Speaker, it is time that the two bodies come together and provide our senior citizens with prescription drug coverage. Now is the time. Today is the day and we should do it before this year is out.

PUNISH CORRUPT CEO'S AND ACCOUNTANTS

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

Mr. ISRAEL. Mr. Speaker, as a New Yorker I know that on the hottest ticket on Broadway has been a comedy, The Producers. The tragedy with recent financial scandals is that we are running the plot line of The Producers in real life.

In The Producers, the accountant, Leo Bloom, is sent to conduct an independent audit of the producer, Max Bialystock. Bialystock begs the accountant to find a way to fudge the books to enhance his earnings. So the accountant finds a way to sell 2,000 percent of stock options in Bialystock's company, losing his independence and becoming part of a scam.

The difference is only on Broadway and in the movies do the accountants and CEO's go to jail. In real life, no one has gone to jail, no personal bankruptcies in senior management, no disgorgements, no accountability. Just victims who have lost it all.

Unlike in The Producers, no one is laughing, not our senior citizen, not our middle class families who are watching their children's tuition funds disappear, not hard-working taxpayers who have to put their retirements on hold. The American dream is turning into an American tragedy right before our eyes and no one is laughing.

BRING MAIN STREET ETHICS TO WALL STREET

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

Mr. KINGSTON. Mr. Speaker, back in April 24 when the House Republicans passed Financial Accountability we had three main points to it. Number one, disclosure of facts. Disclosure of facts to employees, to shareholders, to anyone who may have something at stake that there are some problems, so that people can make intelligently investment decisions.

Number two, if you break the law you are going to jail. We have laws against robbing banks, but people still rob banks, but when they do we put them in jail. There is no difference when you steal somebody's pension plan, you are stealing money. You ought to go to jail. You do not have the guts of somebody who would grab a purse and do it in person. You do it behind the cloak of corporate secrecy, behind the cloak of some accounting firm that you are in cahoots with. But if you are caught, you are going to jail.

Number three, if you are the CEO of some big corporation and you have done this, you do not get to retire in your mansion. You do not get to go off to your mountain home. In fact, you get to be a guest of the government inside a penitentiary. That is what we are after.

Let me say this: We need to bring the ethics of Main Street to Wall Street. It is time to have corporate accountability and pass a Republican plan.

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2003

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to House Resolution 488 and rule XVIII, 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. 5120.

□ 1059

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5120) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Tuesday, July 23, 2002, amendment No. 5 offered by the gentleman from New York (Mr. RANGEL) had been disposed of and the bill was open from page 75, line 11, through page 103, line 10.

Pursuant to the order of the House of that day, no further amendment to the bill may be offered except:

Pro forma amendments offered by the chairman or ranking minority member of the Committee on Appropriations or their designees for the purpose of debate;

Amendments numbered 2, 8, 12, and 18 printed in the CONGRESSIONAL RECORD, debatable for 5 minutes each;

An amendment offered by the gentleman from Georgia (Mr. BARR) regarding a national media campaign, and an amendment by the gentleman from California (Mr. GEORGE MILLER) regarding Federal acquisition regulation, debatable for 20 minutes each;

Amendment No. 16, printed in the CONGRESSIONAL RECORD, an amendment offered by the gentleman from Maryland (Mr. HOYER) regarding high sea repairs, and the amendment at the desk offered by the gentleman from Colorado (Mr. HEFLEY) debatable for 10 minutes each;

Amendment No. 21 printed in the CONGRESSIONAL RECORD, debatable for 40 minutes; and

An amendment offered by the gentleman from Vermont (Mr. SANDERS) regarding taxation of pension plans, debatable for 30 minutes.

Each amendment may be offered only by the Member designated in the order of the House, or a designee, or the Member who caused it to be printed, or a designee, shall be considered read, shall be debatable for the time specified, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment and shall not be subject to a demand for a division of the question.

AMENDMENT NO. 21 OFFERED BY MR. MORAN OF VIRGINIA

Mr. MORAN of Virginia. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 21 offered by Mr. MORAN of Virginia:

At the end of title VI (page ____, line ____), insert the following:

SEC. ____. None of the funds made available in this Act may be used by an executive agency to establish, apply, or enforce any numerical goal, target, or quota for subjecting the employees of the agency to public–private competitions or converting such employees or the work performed by such employees to private contractor performance under Office of Management and Budget Circular A–76 or any other administrative regulation, directive, or policy.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, 2002, the gentleman from Virginia (Mr. MORAN) and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

This amendment is necesary because the Office of Management and Budget has issued an arbitrary requirement on all of the Federal agencies to privatize 127,500 Federal jobs by the end of this fiscal year, and as many as 425,000 Federal jobs by the end of fiscal year 2004. That is nearly a quarter of the entire Federal workforce.

OMB's one-size-fits-all arbitrary privatization quotas do not consider the unique needs of different Federal agencies, and we believe will harm the ability of those Federal agencies to most effectively carry out their missions. My amendment today is wholly consistent with what is called the FAIR Act. This is an act that requires the Federal agencies to identify what jobs could possibly be performed by the private sector. In other words, what jobs could be subject to outsourcing.

This amendment does not put a halt to any agency's ability to contract out a single Federal job, and I am not opposed to privatization where it works. There is $120 billion being contracted out now. In fact, there are more people working for the private sector doing Federal work than actual Federal employees. What this amendment is all about is imposing arbitrary one-size-fits-all quotas on all of the Federal agencies.

They are not all alike. The Internal Revenue Service is different from the Department of Defense; the Department of Defense is different from the Department of Justice; and on and on. We think managers should be able to exercise their own individual judgment and knowledge of their agency's mission. I supported the FAIR Act, I still do, but the FAIR Act intentionally left those decisions on how many or how few jobs to contract out to Federal executives.

Now, there was a Commercial Activities Panel, controversial because many of the Federal employee union organizations felt that they were not adequately represented, but they stated, as one of their principles, that the Federal Government should avoid arbitrary numerical goals. That is what this amendment does. It simply says that OMB cannot issue these arbitrary quotas across all the Federal agencies.

The Commercial Activities Panel said the success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or the contractor workforce. The use of arbitrary percentages, and I am quoting, ''the use of arbitrary percentages or numerical targets can be counterproductive.'' That is the purpose of this amendment.

On that panel was Kay Coles James, who is Director of the Office of Personnel Management, and Angela Styles, the Administrator of the Office of Federal Procurement Policy.

The Federal workforce has been reduced by 600,000 Federal jobs for functions carried out by private contractors. That trend is going to continue, but it should continue in a logical, intelligent, responsible way. This quota approach is not responsible, Mr. Chairman.

Now, as I said, there is over $120 billion for services being contracted out. That does not include any of the submarines ships, planes, tanks, et cetera. This is an effort that is going to continue, but it should continue in a responsible manner.

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

The CHAIRMAN. Does the gentleman from Oklahoma (Mr. ISTOOK) seek time in opposition to the amendment?

Mr. ISTOOK. Yes, Mr. Chairman, I seek to manage the time in opposition.

The CHAIRMAN. The gentleman is recognized for 20 minutes.

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

Mr. Chairman, I believe this is an amendment that is a wolf in sheep's clothing. We heard from its sponsor that this is supposedly to stop people from being arbitrary; to stop people from setting some arbitrary quota, as they call it. The amendment has nothing to do with whether things are being done in an arbitrary fashion. The amendment has as its goal stopping the Federal Government from privatizing or outsourcing, or even trying to, anything that involves work that is currently being done by Federal workers.

It has as its goal stopping the Bush administration's management initiative that is trying to save taxpayers significant dollars. Indeed, they project that typically, when it is proper to do so, outsourcing work can save the taxpayers 30 to 50 percent of normal cost for doing certain functions.

There is a process that is established by prior legislation of this Congress, what is called the FAIR Act, what is

known as the A76 process, and through this there has already been underway for months an effort to identify work that is done by Federal workers that is considered competitive in nature, where it is competing with the private sector. It may involve data processing, it may involve food services.

The Marine Corps, for example, Mr. Chairman, has just contracted out hiring people to feed our Marines. Rather than having to hire them at the wage rates and the benefit rates and the built-in bureaucracy of Federal employees, they hire people who are experienced in handling food; in ordering it, in preparing it, in keeping the inventories on hand, in managing the right numbers, seeking to save the taxpayers tens, if not hundreds, of millions of dollars a year.

We have already had a process that has identified, through the process that the gentleman from Virginia (Mr. MORAN) claims he supports, it has already identified 850,000 people that are on the Federal payroll, doing work that could be done by the private sector, saving the taxpayers potentially 25 to 50 percent of what we are paying now. However, the Federal employees unions, which are perhaps the strongest labor unions in the country, say we do not want that to happen. We do not care if it saves taxpayers money, we want to make sure that these are union jobs.

That is what is really behind the amendment. The amendment does not say what we have been told it says. I want to read to you, Mr. Chairman, and to the other Members, what the amendment actually says. The amendment states: ''None of the funds made available in this act may be used by an executive agency to establish, apply, or enforce any numerical goal, target, or quota for subjecting the employees of the agency to public-private competitions or converting such employees or the work performed by such employees to private contractor performance under Office of Management and Budget Circular A–76 or any other administrative regulation, directive, or policy.''

What it does is to try to stop cold the process of identifying government jobs that are commercial in nature that could be performed by the private sector. It is not about stopping some supposed arbitrary quota. The term arbitrary is not in the amendment. It says you cannot set any goal that involves a number. You cannot set any target that involves a number.

If the goal was to save the taxpayers $1, that is a numerical goal that is outlawed by this outrageous amendment. It is so overreaching. It is not trying to stop people from being arbitrary in having private-public competition, to see who can do the job, who can do it best and who can do it at the best cost for the taxpayers, it is trying to stop the very concept. It is not trying to stop quotas.

If the measure offered by the gentleman from Virginia only said we are going to stop arbitrary quotas and then defined what arbitrary quotas were, then perhaps he might have a case. But his amendment says we are outlawing any numerical goal, any numerical target. And what the Bush administration has done, through the Office of Management and Budget, after going through this process, mandated by statute, mandated by laws passed by this Congress, the process has identified 850,000 jobs currently held by Federal workers that could be done by the private sector and possibly done for as much as 50 percent less than we are paying, they have said, okay, let us try in the next year to compete 15 percent of those. That is 127,500.

It does not say we are going to award those to the private sector. It is saying that 15 percent of these Federal jobs that are commercial in nature, in the next year, are going to have to justify whether they should be Federal jobs or whether they should be outsourced potentially to the private sector, and let the private sector come in and compete and tell us this is what we say we can do and how much we say we can do it for and how we can save the taxpayers money. No guarantee of who is going to win that competition.

But the Moran amendment, by saying we outlaw any goal or any target that has a number, the number may be one employee, the number may be trying to save $1, or the number could be saying we are trying to save the taxpayers $100 million, it does not matter. Any goal, any target that involves a number under this outrageous, overreaching amendment could not happen. We would be locked into the current rate of spending.

Now, right now I am very concerned about how much of the taxpayers' money we are spending and the Moran amendment would guarantee that we could not accomplish savings for the taxpayers. We could not try to hold the line on the size of the Federal Government. We could not try to make things more efficient. We could not let the private sector save us money when they say they can. No. By using language that I believe is deceptive to people, we are told that we cannot have any sort of numerical target because they want to say, oh, that is a quota or that is not a quota.

There is no guarantee of results under the process that is underway, but there is a guarantee of results if we adopt the Moran amendment. The guarantee is taxpayers will lose money. That is the guarantee of adopting the Moran amendment. It denies opportunity to those who want to be able to perform services, whether it be data processing, delivery services, food handling, you name it. If they want to try to provide a service for less to taxpayers, the Moran amendment says ''no.''

□ 1115

Mr. Chairman, we ought to say ''no'' to the Moran amendment.

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

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, to respond to the gentleman from Oklahoma (Mr. ISTOOK), I have a letter that I would like to share with the gentleman from the Federal Managers Association, which represents 200,000 executives, managers, and supervisors in the Federal Government. They say: ''This amendment would simply allow agencies to have the flexibility to make the best decisions for the use of taxpayer dollars without being forced to comply with target percentages.'' That is all they want to be able to do, to be able to exercise their executive judgment. The FAIR Act, which we supported, intentionally left the decision to the agencies on how many or how few jobs to contract out, so those agencies would have the discretion to determine how best to balance their work loads with their budgets.

I do not understand why it would jeopardize the Federal taxpayers' money when private contractors are now receiving $120 billion just for services and Federal payroll is $108 billion.

Mr. Chairman, I yield 3 minutes to the gentlewoman from Maryland (Mrs. MORELLA), who is a valued member on the Subcommittee on Civil Service, Census and Agency Organization.

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

Mr. Chairman, I am proud to be a cosponsor and strong supporter of the amendment. The attempt to set quotas to contract out an arbitrary number achieves nothing. It is bad policy, and I would like to point out some of the misconceptions with regard to the plan: one, that the Federal employee workforce is enormous; and, two, that contracting out immediately makes the government a more efficient, cost-effective workforce. Those are both patently untrue.

Do Members know what the size of the Federal Government was in 1964? It was roughly 1.8 million workers. Do Members know what the size of the Federal work force is today? It is roughly 1.8 million employees. Those individuals railing against big government do not know the facts. If there is a big government problem, it certainly is not due to number of employees. The real growth of government has come through expansion of grants, contracts and entitlements.

Each year the Federal Government doles out $120 billion to contractors compared to $108 billion in salaries and benefits for the Federal workforce. So given this reality, I am puzzled by the recent OMB directive telling agencies to develop plans for competing at least 5 percent of positions listed on their FAIR Act inventories in the next fiscal year. OMB also says all agencies will eventually be required to compete 50 percent of their commercial jobs. That

decision is even more puzzling when studies comparing public servants with private contractors have shown that keeping work in-house is a better deal for taxpayers.

In 1994, GAO studied nine contracting-out situations, finding out that in each case tax dollars would have been saved if the work had been done by public servants. A 1998 Army study, the most comprehensive ever done, found that it was paying 46 percent more for each private contractor employee than for each Army public servant.

So the facts are in. Federal employees are a good deal for taxpayers. They do great work for the American people. Really, it is about time that we recognize that situation and stop supporting measures that undermine their efforts. It is clear that setting an arbitrary number of positions that should be outsourced compounds the problems that we have in many agencies.

To meet OMB's quotas, the Department of the Interior can contract out 97 percent of its FAIR Act jobs without public-private competition, and HHS is contracting out 70 percent of its jobs without public-private competition.

This amendment deserves to be passed, and that is why the Moran-Wolf-Morella amendment is so important and so logical.

Mr. MORAN of Virginia. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. TOM DAVIS).

Mr. TOM DAVIS of Virginia. Mr. Chairman, I rise to speak in favor of the amendment. The question has always been do we take a matter in-house or outsource it. The overriding goal of procurement policy should always be, how did we get the best value for the American taxpayer, period; how do we pay the least cost for the best service.

Sometimes this can best be done in-house with trained Federal workers who have done something over a long period of time. Sometimes it can be done more efficiently by taking it out to the private sector. Sometimes it can be done because the private sector has a certain expertise and experience level we just cannot get through the Federal employees.

Now, the previous administration had numerous initiatives whereby they would eliminate Federal jobs, and they defined their success by how few Federal employees they had. This was a mistake. What we should have been asking was how much money do we save the American taxpayer, not how many employees we have, how much we are outsourcing and the like.

In some cases the jobs eliminated did not save anything because these jobs were off-budget. They were fee paid for, and they were not costing the taxpayers or the general fund a nickel. In some cases we found out we eliminated Federal jobs, but it ended up costing us more money by going outside. But it was driven by quotas, it was driven by numbers, and I submit that is the wrong approach; and that is the problem with the current legislation, which is why I support the Moran amendment because the current legislation looks at arbitrary percentages and says when it comes to outsourcing and competing things in-house, we are going to look at certain percentages in certain agencies, and we are going to define it by this rather than where do we think we can get the best value for the American taxpayer, not how much money will it save.

There is precious little evidence that the elimination of Federal employees by itself saved money during the previous administration. In some cases, as I noted before, these were fee-based employees, and whatever happened was not going to cost the taxpayers or fee payers a penny, but it was arbitrary.

Competitive sourcing is a good thing; but arbitrary quotas, numerical targets, are a bad thing. I would say to this body that the Moran amendment eliminates the arbitrary numbers. This will still allow discretion within Federal agencies to go and compete things. We should encourage them to do that where it makes sense and where we can bring savings to the American taxpayers.

Our goal should not be to preserve jobs at the Federal level, nor should it be to get a certain percentage to get outsourced. Our number one priority that should drive procurement policy, how do we get the best value to the American taxpayer, this amendment furthers that goal. That is why I urge my colleagues to support it.

Mr. MORAN of Virginia. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. WOLF).

Mr. WOLF. Mr. Chairman, I rise in strong support of the Moran amendment, and also acknowledge the gentlewoman from Maryland (Mrs. MORELLA) for her work on this amendment and all of the hard work she does for Federal employees.

To meet OMB's quotas, agencies can contract out these Federal employee jobs without even conducting a public-private competition to determine what the best deal is for the American taxpayer. These targets have absolutely no demonstrated managerial, scientific, or economic justification.

The gentleman from Virginia (Mr. MORAN) is exactly right, they were picked to meet an arbitrary quota. That is not the way to run the government. Under these quotas, the IRS and the Department of Commerce and the Department of Justice, which includes the FBI which is in the forefront of the battle with regard to terrorism, will all be required to meet the same targets.

With the current response effort with the war on terrorism, that does not make any sense. This one-size-fits-all mandate does not consider the unique needs of different agencies and certainly harms the ability of Federal agencies to effectively carry out their mission. For instance, Customs Service, working under heightened levels of security, so much so that the President wants to put it into the new Department of Homeland Security, has no flexibility under these arbitrary quotas.

The Moran amendment would give Federal agencies the flexibility to contract out as much or as little of government work as they feel is necessary to meet the mission requirements. I urge Members to join us in supporting the amendment of the gentleman from Virginia (Mr. MORAN), which recognizes that decisions about how best to deliver government services at the lowest cost to taxpayers should be driven by unique agency mission requirements and not some arbitrary, numerical target or quota that no one understands.

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

Mr. Chairman, I think part of the problem with this as part of not being what it is said to be, is that this amendment seeks to outlaw math. It says we cannot adopt a target or a goal for outsourcing jobs if there is a number involved in the goal. We cannot set a numerical target.

Each agency has identified under law what they have that are jobs being done by Federal workers that are actually commercial in nature. It could be cleaning, data processing, payroll services, construction. This says the administration's goal for each agency, take whatever they have identified, and do not try to compete them all, just compete 15 percent. They say because it is a number, they outlaw it.

If they are serious about this, they should say we should not try to compete more than this percentage of each agency's jobs; but they are trying to say we cannot set a goal that involves a number, which means we cannot set a goal. This effort to save taxpayers money will not do anything because they will stop that effort.

Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. SESSIONS).

Mr. SESSIONS. Mr. Chairman, today what we are talking about is the effectiveness of the United States Government. Today is yet another attempt by those who wish to place handcuffs and arbitrarily stop the government from making sure that the best available worker is available to do a job that is very important for the American people. This administration understands what this amendment is about, and they said the following: ''The administration understands that an amendment may be offered on the floor that would effectively shut down the administration's competitive sourcing initiatives to fundamentally improve the performance of the government's many commercial activities. If the final version of the bill would contain such a provision, the President's senior advisors would recommend that he veto the bill.''

Mr. Chairman, it is very plain what this is about. This is about an opportunity to hamper the President of the

United States, the OMB, from their ability to manage what is a dynamic workforce today on behalf of the United States Government, a workforce that is not just someone who is concerned about inherently governmental activities that the government performs, but about tens of millions of other jobs, tens of thousands of other jobs, that the government can no longer effectively manage and be able to properly make sure that the American taxpayer gets their dollar in return.

I am in favor of this government having every single penny that they need, but not more than that. We need to make sure that this government has the ability to manage its resources, whether we are talking about cooks, or people who take care of lawns, or whether we are talking about people who provide secretarial services or administrative services. What this will do today is to say directly to the OMB, who falls underneath this bill, that they cannot manage outsourcing activities to make sure that the government is properly organized and run.

□ 1130

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

Mr. SESSIONS. I yield to the gentleman from Washington.

Mr. DICKS. Mr. Chairman, I would like to say to the gentleman that one of the major concerns on our side for people who represent thousands of government employees, is that there is supposed to be a competition under A76 in order to let the civilian employees try to maintain their jobs. Sometimes they reorganize into a smaller unit and then they try to compete. Part of our concern is that OMB is saying do not do competition in order to achieve these quotas, and I think that is wrong. I think that violates the existing law. That is why we are so concerned about it. We do not object to the A76 competition if the civilians have an opportunity to compete for their jobs. I thank the gentleman for yielding.

Mr. SESSIONS. Mr. Chairman, I do appreciate that. The gentleman is a friend of mine. This is an honest discussion. The fact of the matter is that it stops dead in its tracks the Bush Administration for reform to make sure that every single government job that is performed on behalf of a grateful Nation is reviewed and looked at in terms of its ability to be price competitive and efficient, and that is what this is all about. And I believe that even those people who stand up today who are offering this amendment would argue with me. We want a more efficient Government. But this is a process that will be stopped dead in its tracks. It is not something that would maybe balance out a circumstance.

The Bush Administration, now more than ever, in dealing with the events of September 11, has had to employ many, many people outside of the Government because the Government is busy doing the things they do. The Government is having to provide all sorts of things to help people even in New York City today that would not come from a Government organization but would come from the Government. The Government simply needs the help, they need the ability, and they need the flexibility.

This is about stopping the Bush Administration from providing efficiency and the flexibility to Government. Not on a balanced measure, but on a total stopping basis because they did it right. The people who do not want this went right to OMB and where they are funded.

I urge my colleagues, I urge Members, please do not do this when now more than ever this Government needs the flexibility to address people's issues, to do it effectively and efficiently.

Mr. MORAN of Virginia. Mr. Chairman, I yield 1½ minutes to the very distinguished gentlewoman from the District of Columbia (Ms. NORTON), our foremost advocate for civil rights and civil service.

Ms. NORTON. Mr. Chairman, I thank the gentleman for yielding me this time and for this amendment that I hope brings us to our senses. I am bemused to hear some Republicans on this floor arguing for quotas. I thought the administration and the Republican Congress stood against quotas. I want to make it clear I do not support quotas in any context, and I certainly do not support or believe Government can tolerate deciding who gets to perform Government work by the numbers. Let us be clear. The Moran amendment leaves in place total ability to contract out work. It is contracting out without competition that assures a fair deal for the taxpayers that is at issue here on this floor. Contracting by the quotas is arbitrary on its face.

Here is an example. In 1 year, they are supposed to go from 15 percent quota to 50 percent quota in certain job categories. That does not exactly lead to careful analysis. And the DOD has decided that the way to meet such an escalated quota is to simply contract out all of the work without any competition. The other agencies are sure to follow when they see that that is how DOD is going to do it. Why not let civil servants compete to do this work? They have been doing it. Let us see who does it best. I thought that is what the other side stood for.

Another reason that makes no sense is that we need to retain workers for 3 years. We on the Subcommittee on Civil Service and Agency Organization, the House and Senate, have been working to keep workers in this Government. When they hear their work is going to be contracted out, they are going to be out of here.

PARLIAMENTARY INQUIRY

Mr. ISTOOK. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. ISTOOK. Is it correct that as the advocate of the committee's position, I have the right to close?

The CHAIRMAN. The gentleman is correct.

Mr. ISTOOK. Mr. Chairman, I yield myself 1 minute and 20 seconds.

Mr. Chairman, I noticed the gentleman from Washington (Mr. DICKS) said that the intent is to make sure that, under the laws that we have passed, there is competition for jobs that are commercial in nature so that Federal employees have the right to compete against the private employees and they are not automatically outsourced. I think that is a very valid position. It is not, however, what the amendment advocates, because the amendment by its express terms prevents public-private competitions.

Any time that you set a goal, if you say we are going to have one competition between the public and private sector, it is outlawed. If you say that 1 percent of the commercial jobs in the Federal sector is going to be competed, it is outlawed. The amendment does not do what many people claim it does. The amendment stops all efforts to have public-private competitions to see if we can save taxpayers' money which typically those competitions save the taxpayers 30 to 50 percent.

The Department of Defense reports that during the Clinton administration years, they outsourced some 550 different initiatives that will be saving taxpayers about $1.5 billion each year. Those efforts could not be pursued by the administration under the language proposed by the gentleman from Virginia.

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

The gentleman is absolutely wrong. The Federal executives will be able to contract out all the jobs they want based upon their judgment of what is in the best taxpayers' interest.

Mr. Chairman, I yield 1½ minutes to the gentleman from Washington (Mr. DICKS), the ranking member on Interior appropriations.

Mr. DICKS. Mr. Chairman, I strongly support this amendment. The FAIR Act was created to list these commercial jobs. It said nothing about quotas or forcing these jobs to be contracted out. That is all we are asking for. Do not set quotas. Let them go in and have a competition under A–76 for these jobs.

I would say to the gentleman, I have served on the Defense Subcommittee, and I know for a fact that once we contract these jobs out, then the cost of the work goes up. OMB fought against us. We used to have postcontracting audits to make certain that once the thing was contracted out, that we actually saved money and did not pay all these contractors more money than we were paying the civil servants. This is ridiculous. This Moran amendment is needed. We do not need quotas. We need A76 competition. Let us have

competition between the public employees and the private employees and let us see who can do the best job and let us do it on an agency by agency basis. Let us support the Moran amendment.

Mr. MORAN of Virginia. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. STRICKLAND).

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

Mr. STRICKLAND. Mr. Chairman, as the founder and cochairman of the Correctional Officers Caucus, I rise in support of this amendment.

I rise today in support of the Moran-Wolf-Morella amendment. As a co-chairman of the Congressional Correctional Officers Caucus, I am acutely aware of the placement of thousands of correctional jobs in our Federal prisons on the FAIR Act inventory. Here's a list from the Department of Justice—it lists 10,260 DOJ jobs that are quote-unquote ''commercial activities.'' Of those ten thousand jobs that the OMB would have us turn over to the private sector, 7,670 are from the Federal Bureau of Prisons. Quite frankly, anyone who says that a job in a prison is ''not inherently governmental'' has not spent enough time in a prison. I worked in a state correctional facility in Ohio for eight years and I will not accept that OMB should be able to force a prison to replace its trained correctional workers with untrained, private-sector cooks or night-shift janitors just because the cost is cheaper. Prisons can be dangerous, and workers cannot switch between private-sector jobs and prison jobs without risking their own safety and that of others. Now, more than ever, with our increased focus on terrorism, we need trained, Federal, correctional workers in our Federal prisons. These prisons often serve as administrative holding pens for the INS and Federal courts for terrorists. For example, in 1998, two defendants on trial for the 1993 World Trade Center bombing assaulted an employees of a facility in Lower Manhattan, immobilizing him for life. This amendment would prevent OMB from setting prison policy. It would ensure that our Federal correctional workers are just that: Federal. For this House to vote to federalize all baggage screeners at airports, and then to allow OMB to force ill-prepared workers into the ranks of our Federal prisons is abominable. Let's let the agencies manage their own personnel, and let OMB manage itself. Vote ''Yes'' on the Moran-Wolf-Morella amendment.

Mr. MORAN of Virginia. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Illinois (Mr. DAVIS).

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Chairman, this amendment recognizes the principle that competition should drive decisions about work management. We all know that over the years, there has been some sentiment that somehow or another government work is inferior, that the private sector can do it more effectively, more efficiently and save the taxpayers money. But that is a flawed notion. It is a flawed argument. There is a cadre, a corps of competent, hard-working Federal employees who have the expertise and skill to do the job. We need to provide for them the opportunity to compete, to display their skills and talent. That means the only way we can do it is to support the Moran amendment. I urge its support.

Mr. ISTOOK. Mr. Chairman, I yield myself 2½ minutes.

I think the most important thing that anybody can do, Mr. Chairman, in this particular debate, or any debate when people say, well, this amendment does one thing and someone says, no, it does not, it does something else, the most important thing people can do is read the amendment. Look for yourself.

The gentleman from Virginia would have people believe that this amendment is just about outlawing quotas, that it is about outlawing arbitrariness.

Not at all. Nothing in the amendment says anything about arbitrary decisions. And although, yes, it does mention outlawing quotas, it goes far, far beyond that. It outlaws setting goals. It outlaws the very first steps in the process of trying to determine whether taxpayers are best served by having certain work done by government workers or by workers in the private sector.

We spent a lot of time in this Congress setting up this process to compete public and private jobs, but the amendment states, you cannot establish, and I quote, any numerical goal, target or quota. It does not say we are outlawing quotas. It says we are outlawing numerical goals. We are outlawing targets. We are outlawing things in the very first stage of the process, the goal-setting stage. If you say our goal is to save the taxpayers $10 million, oh, no, can't do it under the Moran amendment. If you say our goal is to compete 1 percent of the jobs that have already been identified by the agencies as being commercial in nature and we just want to have a competition to see can it best be done in the public sector or can it best be done in the private sector, no, because you said we want to compete 1 percent.

If the Bush administration or its Office of Management and Budget, should they contact an agency and say we want you to try to at least compete 1 percent of the jobs you have, or just one job, under the gentleman from Virginia's amendment, that is illegal. Nobody has any control over the Federal bureaucracy under the gentleman from Virginia's amendment except, of course, the Federal employees labor unions. That is not right.

Let people set goals and have the competition. Let us see who wins the competition. Which is best for the taxpayer in each specific instance: Is it best that this work be done by the public sector or best to be done by the private sector? Do not be afraid of finding out. Vote against the Moran amendment. When in doubt, read the amendment.

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

Mr. MORAN of Virginia. Mr. Chairman, I yield 1½ minutes to the gentleman from New Jersey (Mr. ROTHMAN).

Mr. ROTHMAN. Mr. Chairman, let us make no mistake about what this debate is all about. It is about privatization, not about whether we should save taxpayers' money.

Did you know that today, any Federal manager who wants to outsource or privatize any or all of his or her Federal workforce's jobs can do so? Today they can outsource or privatize any or all of their work if they can demonstrate it saves taxpayers' money. So why has the Bush administration and so many of my Republican colleagues said we need a quota where by the end of fiscal year 2003, 85,000 Federal jobs must be privatized when they can do so now if the managers feel it is important and will save taxpayers' money?

□ 1145

Why do they want that privatization quota? Because my friends on the Republican side of the aisle, most of them, and this President, believe in privatization. That is why they still want to privatize Social Security. That is why when we talked about prescription drugs for seniors, Democrats said put it under Medicare where it will be safe and all seniors can get it. My Republican friends said, no, prescription drugs for seniors, give it to private insurance companies to manage. Privatize it, just like the Medigap coverage. They believe in privatization.

They hate big government. That is why they wanted to privatize Social Security, that is why they voted against Medicare when it first came up, and they want to do this now with prescription drugs and these employees.

Support the Moran amendment, and let competition be the rule of the day, not quotas and privatization.

Mr. ISTOOK. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. SESSIONS).

Mr. SESSIONS. Mr. Chairman, you have heard the truth today. This is all about employee labor unions, government labor unions, versus the White House. But there is so much more that needs to be said. We have talked about government efficiency. The fact of the matter is that this United States Congress is going to provide the most money we have ever provided, ever, to the United States Government to perform its tasks and duties that need to be done. The Bush White House believes that government will and should get every dollar it needs, but not a penny more that might go to waste.

What this Bush Administration is asking for is the ability that they have to manage the workforce with the dollars that have been given to them. There are things that happen every day, not just September 11, but disasters across this country. The Bush administration may want to do the right

thing by outsourcing things that might be done to where people can be helped.

The bottom line is this is about whether we are going to stop the Bush Administration from doing those things that are oriented to reform, about whether the Bush administration is not going to be able to manage its resources and assets out of the OMB. It is real simple. I understand it, and I get it.

I think this body should respond by saying we need to give this President the opportunity to not only reform government, but to make sure that efficiency and correctness is done with the efficiency and assets that are given to the government.

George Bush is honest and sincere about taking care of people's problems and needs, but he needs the ability to manage that in a dynamic workplace and in a dynamic country where the needs pop up every day.

If you say all the work only has to be done by government employees, then I think that the American people are missing out. I support what we are doing today to say no to the Moran amendment, because it is wrong and does not help government efficiency.

Mr. MORAN of Virginia. Mr. Chairman, how much time is left?

The CHAIRMAN. The gentleman from Virginia (Mr. MORAN) has 1½ minutes remaining, and the time of the gentleman from Oklahoma (Mr. ISTOOK) has expired.

Mr. ISTOOK. Mr. Chairman, my time has expired? Would you double-check that, please?

The CHAIRMAN. Two minutes was yielded to the gentleman from Texas (Mr. SESSIONS), and that expired all the time for the gentleman from Oklahoma.

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

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

The CHAIRMAN. The gentleman cannot move to strike the last word until the time for debate has expired.

Mr. HOYER. Mr. Chairman, under the rule, I am the ranking member.

The CHAIRMAN. The amendment is pending. There are 1½ minutes remaining for debate under the amendment offered by the gentleman from Virginia (Mr. MORAN), and until that time has been completed, the Member cannot strike the last word.

Mr. MORAN of Virginia. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. WAXMAN).

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

Mr. WAXMAN. Mr. Chairman, I rise in favor of the Moran amendment. It is an important amendment, and I urge all Members to vote for it.

Mr. Chairman, this amendment is simple. It would prohibit federal agencies from using arbitrary quotas to subject federal employees to either public-private competitions or direct conversions.

This Administration has directed agencies to review for outsourcing 425,000 jobs by the end of 2004. In March 2001, OMB directed all agencies to contract out at least 5 percent of the jobs capable of being outsourced. That's 42,500 jobs. That quota increases to 10 percent in FY 03—another 85,000 jobs.

The use of these quotas has been roundly criticized for their one-size-fits-all approach to improving efficiency in the federal government. Arbitrarily assigning quotas is poor management practice. It demoralizes the workforce and forces reductions where none may be warranted.

These quotas will also encourage agencies to contract out the jobs of federal employees through direct conversions, without the often time-consuming public-private competitions. This unfairly denies Federal employees the opportunity to defend their jobs and denies the taxpayer the benefits of such competition.

I know that Representative TOM DAVIS from the Government Reform Committee agrees with these concerns. At a hearing last year he said he was ''alarmed'' by OMB's use of quotas and that ''No justification for these percentages has been offered to date.''

So this amendment should not be controversial. It would not prevent agencies from competing, converting, or contracting out Federal jobs. However, agencies would no longer be forced to comply with arbitrary quotas.

When debating this issue, we used to hear the argument that we needed to wait for GAO's Commercial Activities Panel to issue its report before prohibiting the use of quotas. Well that report was issued in April and one of its principle recommendations was to ''Avoid arbitrary full-time equivalent or other arbitrary numerical goals.'' It goes on to say that ''the success of government programs should be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce. . . . The use of percentage or numerical targets can be counterproductive.''

OMB has generally endorsed the results of the GAO Panel report. It should endorse the recommendation on quotas. They are generally recognized to be bad management technique and we should eliminate them. I urge members to vote for the Moran amendment.

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the point I want to make is that we are not opposing privatization, we are not opposing outsourcing, and the point that the gentleman from Oklahoma was trying to make simply is not consistent at all with this amendment.

We are opposed to arbitrary quotas. They are arbitrary because they apply to every single Federal agency. The Department of Defense is different from the IRS. More than 225,000 jobs in the Department of Defense are supposed to be privatized by the end of 2004. The managers at DOD said that is not going to work. But at the IRS, do we really want to apply the same arbitrary quotas? Do we really want private accounting firms reviewing income tax returns, private collection agencies enforcing income tax receipts? I do not think so.

Every agency is different, and every Federal manager understands their agency. We do not want arbitrary quotas, but we certainly want the best use of the Federal taxpayers' money. It is only managers that can identify what jobs should be privatized by function.

Mr. Chairman, OMB's directive is so burdensome that the result is direct conversion of jobs to the private sector against the wishes of the managers, because the managers know that the only way they are going to get a green light, which is the system that OMB is imposing, is to meet these targets. But they also know they are arbitrary. They know they are not in the best interests of the taxpayer.

The CHAIRMAN. All time has expired on this amendment.

Mr. HOYER. Mr. Chairman, I ask unanimous consent that there be an additional 5 minutes of debate on this amendment, and that that time be equally divided, 2½ minutes to the chairman of the committee and 2½ minutes to the gentleman from Virginia (Mr. MORAN).

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

There was no objection.

The CHAIRMAN. The gentleman from Virginia (Mr. MORAN) is recognized for 2½ minutes.

Mr. MORAN. Mr. Chairman, I yield 2½ minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, I rise in very strong support of this amendment.

The gentleman from Texas (Mr. SESSIONS) makes a good point. All of us want the government managed so that we save taxpayers' dollars and we effect the ends that this Congress wants effected on behalf of the American people. This is not a partisan amendment. This is not a union amendment, let me say. I want to read you two quotes that I hope Members listen to.

One is from David Walker, the Comptroller General of the United States. By the way, he is not a Democrat, as you probably know. In considering this issue, and the issue is simply whether or not you set numerical, and that is the key, ''numerical,'' that is the word in this amendment, and, yes, I have read the amendment, numerical, because once you set the numerical, then you in effect say either you have to or you in fact have an expectation that you will get to X percentage, irrespective of whether the competition and the analysis shows you save money. Irrespective of that. That is the problem with the policy that the President is pursuing through OMB.

Now, what does the Comptroller General, a Republican, the head of GAO, the head of overlooking efficiency and effectiveness in government, say? ''It is inappropriate to have quantitative targets in the area of competitive sourcing.'' The Comptroller General. He disagrees with your proposition, therefore. He disagrees with the President's proposition. Why? Because it is

not an effective and efficient way to accomplish the objective that all of us share.

Secondly, not a partisan politician, Paul Light, respected overseer of the Brookings Institution view of public employment, says this: ''The Bush administration should show that it means business by imposing a moratorium on its competition initiative which has a,'' listen to this, ''ready-fire-aim quality, and think more systemically about what the Federal Government needs to do its job.''

That is what the Moran amendment says.

Support the Moran amendment. Reject arbitrary and capricious management by numbers.

The CHAIRMAN. The gentleman from Oklahoma (Mr. ISTOOK) is recognized for 2½ minutes.

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

Mr. Chairman, I continue to be amazed by the difference between the rhetoric and the reality. The amendment that we are asked to approve does not outlaw just results, it outlaws the competition. The amendment states you cannot set a goal for what percentage of jobs or how many or what dollar targets. You cannot set a goal for how many jobs you will compete.

We are not talking about a guarantee of the results of the public-private competition. They want to stop the competition from ever happening.

A couple of years ago, Mr. Chairman, we in Oklahoma were so proud that the Oklahoma Sooners had a chance to play for the national championship game in football against Florida State in the Orange Bowl. But under their scenario each side could say, ''You know, we have got the better team,'' but you could never play the game.

They outlaw the competition under this amendment. They say you cannot play the game. So it does not matter what else they may say about it or what else they may include in the amendment. The killer in their amendment is you cannot set a goal for what you are going to subject to competition.

The Bush administration is not setting a goal saying you must transfer so many jobs from the public sector to the private sector. They are saying of the jobs that you have already identified as being commercial in nature, take 15 percent of the jobs that you identified and find out. Have the competition between the public sector and the private sector, but do not outlaw the game from being played.

You cannot set a goal, you cannot set a target, without including a number. They say any goal, any target that has a number in it, is illegal. That is wrong. That undercuts the reforms that this Congress has adopted trying to save the taxpayers money.

The Department of Defense says they are already saving about $1.5 billion each year because they have followed this process. We have the potential for hundreds of millions or billions of dollars of savings to Federal taxpayers by saying, Federal employees, compete against the private sector for activities that are inherently commercial in nature.

Let it happen. Play the game. Find out who is right or wrong. Do not stifle competition. Do not outlaw competition, like the Moran amendment does. Vote no.

Mr. DAVIS of Illinois. Mr. Chairman, I rise in support of the amendment offered by my colleague Mr. MORAN of Virginia, which affords flexibility to Federal agencies in decisions concerning contracting out of government work.

There has been a growing sentiment over the years that government work is inherently inferior to that offered by the private sector—that somehow the private sector has a monopoly on brains, diligence, and professionalism. As a result, there has been a thrust towards establishing across-the-board quotas to privatize more and more of the work traditionally done by the government.

However, these assumptions are flawed. We have certainly learned a lot in the last year. First, there is a core of extremely competent Federal employees dedicated to serving the American public. Second, there is an undercurrent of greed and abuse in the private business world that is not worthy of emulation.

Representative Moran's amendment recognizes that decisions about how best to deliver government services in a quality manner at the lowest cost should depend on unique agency mission requirements, and not on arbitrary across-the-board quotas for privatization. I urge my colleagues to vote in support of this amendment.

Mr. KIND. Mr. Chairman, I rise today to support the Moran-Wolf-Morella amendment that would prohibit the use of arbitrary outsourcing quotas for federal jobs. The Office of Management and Budget (OMB) issued a requirement that every federal agency open up 15 percent of the federal jobs listed on its Federal Activities Inventory Reform (FAIR) Act inventory to outsourcing by the end of FY 2003. OMB has also stated its ultimate desire to establish a final quota to outsource 50 percent of these inventoried positions, roughly a quarter of the entire federal workforce.

This one-size-fits all mandate does not consider the unique need of different agencies and could harm the ability of federal agencies to effectively carry out their mission. Some agencies have more experience with outsourcing than others. At present, the Department of Defense (DOD) is a leader in outsourcing federal jobs. However, the Government Accounting Office (GAO) has found that DOD has had difficulty determining the actual costs of contracting out services and these problems call into question the purported savings incurred.

Currently, I am experiencing this issue first hand in western Wisconsin where the employees at Ft. McCoy lost a contract bid to provide administrative services at the Fort. This decision threatens over 400 jobs. I, along with other members of the Wisconsin delegation, have asked DOD to review the decision to determine if outsourcing, in this instance, is the best way to optimize Ft. McCoy's mission and achieve real savings.

Opponents claim that the Moran-Wolf-Morella amendment would end the contracting out program. This is simply false. The amendment would provide the agencies with the flexibility to outsource as they see fit. It just would prohibit OMB or another agency from using numerical quotas, targets or goals for opening up federal employment jobs to private contractors.

Decisions regarding how to best deliver government services at the lowest cost should be driven by unique agency mission requirements, not arbitrary numerical requirements for privatization. I urge my colleagues to support the Moran-Wolf-Morella amendment.

The CHAIRMAN. All time for debate has expired.

The question is on the amendment offered by the gentleman from Virginia (Mr. MORAN).

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

Mr. MORAN of Virginia. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Virginia (Mr. MORAN) will be postponed.

AMENDMENT OFFERED BY MR. HEFLEY

Mr. HEFLEY. 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. HEFLEY:

Page 103, after line 10, insert the following new section:

SEC. ____. The amount otherwise provided by this act under the heading ''Allowances and Office Staff for Former Presidents'' is hereby reduced by $339,000.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, 2002, the gentleman from Colorado (Mr. HEFLEY) and a Member opposed each will control 5 minutes.

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

The CHAIRMAN. The gentleman from Maryland (Mr. HOYER) will control 5 minutes in opposition.

The Chair recognizes the gentleman from Colorado (Mr. HEFLEY).

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

Mr. Chairman, for the first time in our Nation's history, we have five former presidents alive at the same time. We are also in the process of recovering from an economic downturn and all Americans are being asked to tighten their budgets to make ends meet.

□ 1200

That should include all government employees and agencies, even our former Presidents. We should make a strong effort to use cost-effective methods of operating our offices.

The trend of drastically increasing the amount of money we give our former Presidents to operate their offices is a trend that we have the ability to control. We have a situation where former President Clinton's rental expenses will end up costing taxpayers at

least $436,000 next year, whereas the expense of Ford, Carter, Reagan and Bush's offices combined would only cost $528,000.

We are also seeing a drastic increase in miscellaneous services. Former President Clinton received $80,000 for what is called ''other services'' in fiscal year 2002. That is roughly five times the amount that former President Reagan used, six times the amount that former President Bush used, and eight times the amount that former President Ford used in fiscal year 2002.

Now, I am not picking on President Clinton. What I am trying to do here is simply show a trend. After all, there are more Republican former Presidents than there are Democrat former Presidents, and may it always be the case; but there is a trend there.

Many of the allowances for former Presidents are necessary; no question about that. However, numerous costs leave room to be reduced.

I am asking for a reduction in these budgets, as they have seen strong growth in the past few years. I want to take care of our past Presidents, but enough is enough. I am merely asking for a slight reduction in allotting these funds. We cannot continue to increase the allowance at the rate of more than 10 percent every year.

What I am asking for, Mr. Chairman, is that in the time of impending budget deficits, we tighten our belts where we can. What we are talking about is a little over $300,000 worth of reduction here, not a monumental amount as our budgets go; but at least it would reverse this trend of ever increasing these particular accounts.

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

Mr. HOYER. Mr. Chairman, I rise in opposition to the gentleman's amendment, and I yield myself such time as I may consume.

Mr. Chairman, we passed on suspension a bill that passed overwhelmingly that allocated $10 billion. It was subjected to 40 minutes of debate on this floor last night. We voted. There were hardly any votes in opposition.

This issue is so de minimis in terms of its dollars, any dollar is important, I understand that, but that it must be interpreted simply as either symbolic or annoying.

The gentleman from Colorado projects this as a small amount of dollars but, relatively speaking, I will tell my friend, they are a relatively large number of dollars. In fact, they are 41 percent of the discretionary dollars from which this cut would have to be made, almost half.

Now, why do I say that? Because pensions are given, salaries of those currently on board working for President Ford, President Clinton, President Bush, President Carter are not going to be cut, so that the remaining money will simply be cut from the $880,000 for all five Presidents, and Mrs. Johnson, the widow, who gets a very, very small sum and, therefore, the sum that the gentleman suggests, while yes, presumably a smaller sum of the whole, but because so much of the whole is already committed, that which remains, the discretionary dollars from which it is cut, it is a 41 percent cut.

Now, Mr. Chairman, there are more Republican former Presidents, but let me tell my colleagues one that I speak to most frequently, interestingly enough, not a Democrat, but a Republican, for whom I have great respect and unlimited affection, and that is President Gerald Ford, who has used his resources, his position, his experience, his wisdom in a very positive way, as has President Carter, and as have all of the other Presidents. I will tell my colleagues that President Ford believes these kinds of amendments are, in effect, simply scratching former Presidents, as if somehow they are a problem fiscally for the country. Indeed, I look at them as just the opposite: a great resource for this country, that we spend some $3.3 million on, to allow them to be effective in their role, unique role, as former Presidents.

So I would ask my colleagues to review this amendment in the terms of, A, it is a relatively small amount of money in the context of the dollars that we are talking about, even in this relatively small bill, but a significant sum in undermining the ability of former Presidents to travel and, frankly, when they travel on the private sector, my colleagues must understand, they travel at private sector expense, not a public expense, not at taxpayer expense.

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

Mr. HEFLEY. Mr. Chairman I yield myself such time as I may consume.

I think the gentleman from Maryland has a good point, this is a small amount, and it is somewhat symbolic. It is saying, when we are trying to get our budget back in balance, we need to cut wherever we can cut. But even though I would say to the gentleman from Maryland (Mr. HOYER) that it is a small amount, it amounts to all of the taxes, Federal income taxes paid by 60 American taxpayers, average taxpayers. That is a lot of money for them. That is all their taxes.

What we are saying is, for those 60 taxpayers, we are going to use your money in a more effective way. We are going to use it for things that maybe are a little more important.

I tell my colleagues, when we are in this kind of a situation, when we are in great times, we do not seem to worry about it much; but when we are in these kinds of tight times, we really do need to put value judgments on where we spend our money and where we do not spend our money and where we save money wherever we can.

So I would again encourage the adoption of this amendment.

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

Mr. HOYER. Mr. Chairman, I yield 50 seconds to the gentleman from Oklahoma (Mr. ISTOOK).

Mr. ISTOOK. Mr. Chairman, although I have, frankly, a great amount of sympathy for the amendment offered by the gentleman from Colorado (Mr. HEFLEY) and I think there is a need for us to do something regarding the accounts of former Presidents, I do not believe this amendment is the way to do it, because I believe we need to lay a groundwork and to do whatever we might accomplish through an understanding between the Congress and the offices of the former Presidents.

These accounts were established, of course, back in the years when former Presidents did not have a stipend, did not have very huge speaking fees and other sources of revenue, and played a very different role than they do today. I think there are some things that we can accomplish in having some savings, but I believe that comity between the executive and the legislative branches requires that we try to do that in an orderly fashion and lay a groundwork with former Presidents, rather than try to change the ground rules that we have followed for many years arbitrarily.

So, therefore, despite my sympathy for it, I do urge a ''no'' vote on the amendment by the gentleman from Colorado (Mr. HEFLEY).

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

I would hope that not only the respect for these five former Presidents, unique Americans, but also an understanding of the important role they play in our country, would lead to Members opposing this amendment, and I urge them to do so.

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

I respect our former Presidents, and I think they have a unique role to play; and I want them to play that role, and I want us to provide for them so that they can play that role. But do we really need half a million dollars to support them playing that role each year? Ford, Carter, Reagan, about a half a million dollars, a little more, a little less, about a half a million dollars.

By the way, President Carter, who I have great respect for as a former President, a tremendous former President, I think, he asked for no increase whatsoever this year. President Bush, former President Bush, he is moving up towards three-quarters of a million dollars, and, of course, President Clinton is $1.1, a little over $1.1 million. Do we really need, for instance, in Clinton's case, to spend $436,000 for rent? Do we really need that? Now, he chose New York City. He could have chosen Arkansas, where he is from; but he chose New York City. Do we really need to spend half a million dollars on his rent? Do we need to spend $174,000 for the rent of President Bush in Houston? Mr. Chairman, I question these things. I think this symbolically does send a message that we are trying to get a grip on spending up here. It does not make a great impact on the total budget of the United States Government, but it does send a message.

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

Mr. HEFLEY. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Chairman, does the gentleman agree with me that the items he has mentioned and, obviously, they go down the further the President is a past President; does the gentleman agree with me that the dollars he seeks to cut would not and could not be cut from those items?

Mr. HEFLEY. Mr. Chairman, no, I do not.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado (Mr. HEFLEY).

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

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

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment of the gentleman from Colorado (Mr. HEFLEY) will be postponed.

AMENDMENT NO. 18 OFFERED BY MR. KUCINICH

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 18 offered by Mr. KUCINICH:

At the end of the bill (before the short title), add the following new section:

SEC. ____. None of the funds provided in this Act shall be used to enforce or implement discounts for the statistical value of a human life estimated during regulatory reviews through implementation of OMB Circular A-94 Guidelines and Discount Rates for Benefit Cost Analysis of Federal Programs or any guidance having the same substance.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, 2002, the gentleman from Ohio (Mr. KUCINICH) and a Member opposed each will control 2½ minutes.

Mr. ISTOOK. Mr. Chairman, I reserve a point of order.

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

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

Mr. KUCINICH. Mr. Chairman, I would like to offer the Value of Human Life Amendment. I believe that all human lives are equal. Our founders said as much when the Declaration of Independence was drafted: ''All men are created equal.'' Whether young or old, born last year or next year, no one person is worth more money than the other intrinsically. I think that nearly all of my colleagues in the House would agree with me on this point. Unfortunately, the Office of Management and Budget has been acting in a way contrary to this deeply held principle of human equality.

When the Office of Management and Budget goes through a regulatory review, it expects that an agency has completed a cost-benefit analysis. As part of the cost-benefit analysis, sometimes, human lives are included.

For example, the arsenic rule that was accepted by the EPA last year will result in a savings of many human lives that otherwise, if exposed to a higher exposure to arsenic, would have been lost. For the cost-benefit analysis for that rule, all of the lives that would have been saved were added up in dollars at a rate of about $6.1 million per person. In the cost-benefit analysis, EPA included the total figure, in dollars, as part of the total benefits of lowering arsenic levels in the drinking water.

Now, what if, instead of being worth all the same, many lives were valued at a much lower level, say $1.1 million. This is exactly what an outside group, the AEI-Brookings Joint Center for Regulatory Studies did in its study. It did not want to see arsenic levels in drinking water lowered, so it employed the tactic of human discounting. Human discounting is when a discount rate is applied over a time period to reduce the dollar value of the human lives that are saved. So instead of calculating the number of lives saved at the same value, human discounting artificially reduces the dollar value of human lives. By reducing the value, it makes the benefit appear smaller.

AEI-Brookings assumed that the cancers caused by arsenic would not apply for 30 years, so it applied a discount rate over 30 years. Applying these calculations, it estimated the value of a life at $1.1 million instead of the EPA's estimate of $6.1 million.

The impact of using discounting on the value of human life was enormous.

Relying upon the AEI-Brookings study, the Washington Post ran a series criticizing EPA, and the Administration held off on the rule for 8 months, accepting it only after enormous public outcry.

The use of human discounting is a tactic used to distort the benefits of a policy. Instead of having a discussion of saving lives, it allows opponents to reduces lives to dollars, and then reduce the dollar value. Human discounting is literally, a discount on life. It places a reduced value on a human life. Human discounting cheapens life. Human discounting says, a person is not worth as much next year as he is today, and the dollar value or his or her head is less next year than it is today.

For tangible objects, like buildings or machines, the concept of discounting makes sense. We employ depreciation rates all the time. Capital things depreciate, and that can be reasonably measured. But is it just to or even reasonable to employ depreciation rates for people? Congress has never allowed it before.

Since 1992, when the OMB presented Circular A–94 that specifically advised agencies to use a 7 percent discount rate, it has continued to issue guidance and communications to agencies to apply this discount rate to human lives. However, there is no statute that Congress has passed that tells agencies to sue a discount on human lives. There is no statute that even permits it. Yet OMB has advised agencies that discounts should be applied to human lives when cost-benefit analyses are completed.

Ending human discounting is the ethical thing to do by refusing to put different dollar values on different people. If OMB advises agencies to discriminate between different ages of people, what is to stop it from putting different values on people based on income, race or gender?

I urge OMB and other agencies to stop this practice and use the same value for all human lives.

The CHAIRMAN. The time of the gentleman from Ohio (Mr. KUCINICH) has expired.

Mr. ISTOOK. Mr. Chairman, before taking time or pressing a point of order, I would ask the gentleman if he would be willing to withdraw his amendment.

The CHAIRMAN. Let me just state that each Member was recognized for 2½ minutes, a total of 5 minutes debate under the unanimous consent agreement on this amendment.

Mr. ISTOOK. Mr. Chairman, rather than my consuming the time and pressing the point of order, I would inquire of the gentleman from Ohio if he is willing to withdraw his amendment.

Mr. KUCINICH. Mr. Chairman, I ask unanimous consent to withdraw my amendment.

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

There was no objection.

□ 1215

AMENDMENT NO. 16 OFFERED BY MR. HEFLEY

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 16 offered by Mr. HEFLEY:

At the end of the bill (before the short title), insert the following:

SEC. . Each amount appropriated or otherwise made available by this Act that is not required to be appropriated or otherwise made available by a provision of law is hereby reduced by 1 percent.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, 2002, the gentleman from Colorado (Mr. HEFLEY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Colorado (Mr. HEFLEY).

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

Mr. Chairman, I am asking we make a 1 percent reduction in our spending for the Treasury and Postal Services appropriations. With a discretionary budget of roughly $18.5 million, a 1 percent reduction with amount to $185 million, which is a lot of money to most of us but not a lot compared to the overall budget. When dealing with these billions and billions of dollars of spending, this is a figure that the agencies can easily work around.

I am not criticizing, Mr. Chairman, the work of the committee. I know the dynamics of getting a bill through the committee and getting it to the floor, and I think they have done a good job on this bill. But the last estimate for

this year's budget deficit would amount to roughly $150 billion dollars.

In order to balance this budget, Mr. Chairman, I am asking that every agency make a minor decrease in its rate of spending. I am not asking for any agency to take a big cut. I am requesting that they reduce their spending. If every agency complies with this request, we can actually come close to offering a balanced budget this year. We would the excuse that. We are at war and we are at a time of economic downturn. And, by gosh, that is a good excuse. It is not only an excuse, it is a reason. And if we want a reason to not balance the budget this year, we have got reasons for not balancing the budget this year. But I think we need to adopt the philosophy that if we do not have it, we do not spend it. We tighten our belts and we figure a way to maintain that balanced budget.

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

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

The CHAIRMAN. The gentleman from Oklahoma is recognized for 5 minutes.

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

Despite my great sympathy for the amendment offered by the gentleman from Colorado (Mr. HEFLEY), I cannot support it. This particular bill, were it subjected to across-the-board cuts, would find that we have significant cuts and reduction in homeland security efforts which are the major focus of the bill.

We have already identified in the subcommittee and the committee several places where we have applied significant cuts, for example, the Bureau of Public Debt, some $23 million. Bureaucracy within the Office of Narcotics and Dangerous Drugs in excess of $10 million. The First Accounts Program with the Treasury Department, approximately $6 million say from what we had last year and yet improve the program, I believe. These are certain examples and there will be others.

We have what we have done, Mr. Chairman, in this bill is to try to accomplish savings every place we can and plow those into the front lines of homeland security. Border security, in particular with the Customs Service, where we have significant increases in the air and marine program, the investment and information technology, in the research and developments to use better levels of technology to secure our borders, the Container Security Initiative, trying to protect us from having something brought in within the $8 billion daily of commodities that come into the country as part of the international trade. I do not think we could accomplish an across-the-board cut without jeopardizing those.

I do agree with the gentleman about the need for significant cuts overall in Federal spending. Unfortunately, because of the extreme needs of homeland security and national defense and the as yet unwillingness of people to make some sacrifices in some other places in the government, I do not think it is a practical amendment at least certainly not in this particular bill. I do want to work with the gentleman and everyone else in this body to try to identify more specific cuts that can be made in all of our bills, but I cannot support this particular amendment.

Mr. Chairman, I yield the balance of my time to the ranking member, the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, I rise in opposition to this amendment. A one percent across-the-board cut, small number.

First of all, let me say to the gentleman something he did not say, the committee has already adopted the President's administrative cuts of $50 million across the agencies with the exception of the law enforcement agencies, with the exception of the law enforcement agencies because as the gentleman has pointed out, we are confronting terrorism here at home and around the world.

But let me speak to the larger question that the gentleman, I think, probably does not know, and too many of our Members do not know this fact, the public probably does not know this fact either.

In 1962, 40 years ago, this country spent 3.4 percent of its gross domestic products on domestic discretionary spending. That is what this is all about, spending on the Treasury Department, GSA building, the President's salary, expenses that we are talking about, 3.4 percent. The last year for which we have record, we are in 2002, for 2001, I tell the gentleman, notwithstanding all the rhetoric about exploding expenses, we spent 3.4 percent of GDP on domestic discretionary spending.

Only one year I tell my friend, from 1981 through 1993, the presidencies of Ronald Reagan and George Bush, only one of those years did we spend as little as 3.4 percent of GDP. All the rest of the years were either in the 3.5's or above or in the 4 percent of GDP.

So I tell my friend, the Committee on Appropriations, which all the authorizers think is spending money willy nilly, is spending less money today as a percentage of GDP than we did in the Reagan and Bush years. So the belt has been tightened. That is important that the public understand that.

I speak in strong opposition to this bill. It is so easy to come to the floor and say do 1 percent across-the-boards, or 2 percent or 5 percent or 10 percent. That is easy. What is tough is to come to this floor and say cut X or Y or Z because it is not as effective and efficient.

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

Mr. Chairman, the gentleman from Idaho (Mr. OTTER) is not here, so I guess I will go ahead and close. I do not want to hold things up.

Both the gentleman from Oklahoma (Mr. ISTOOK) and the gentleman from Maryland (Mr. HOYER) mentioned the law enforcement portions of this thing. I am not going into any accounts and picking out and saying cut that except for the presidential thing that I did earlier. You have to make choices. If law enforcement is the important thing now, we need to put the emphasis on law enforcement.

I think the gentleman from Maryland (Mr. HOYER) had very good figures there about the percentage we were spending before and now, the point is we have had a history of spending far, far too much money at the Federal level over the years, and we continue this history. Now, we have tightened our belts.

I have listened to the gentleman from Maryland (Mr. HOYER) but I have to close this thing out. We have spent too much money traditionally. It is the habit here and as I said in my statement, I am not criticizing the committee for their work.

By golly, the gentlemen here do a good job on this committee. They do the best they can. I understand too it is very tough to get a bill with any cuts out of it out of committee because everybody has something they are particularly interested in. Everybody has at least one thing that is the most important thing in their life, and in committee those dynamics work. On the floor, it may be those dynamics do not work as well. It might be easier for us to pass something like this on the floor than it is in committee.

Mr. Chairman, I yield to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, I understand the gentleman's point. The point I was going to make is when the gentleman says we spend too much money, I agree with him. I am one of Democrats that voted on the balanced budget amendment. I agree that we need to live within our means. The point I want to make to my friends who are not on the Committee on Appropriations, is this is an OMB figure I read, it is not because we are spending more discretionary dollars. That is what we focus on because those are the bills on the floor.

In the tax bills, it is not entitlement bills, et cetera, et cetera, where we are spending the real money and when we look at those figures, that is where the additional expenditures are occurring that the gentleman is concerned about, not in the appropriations process.

I know it is difficult for Members who only get a chance to make their point only when we come to the appropriations process. So it is frustrating to say this is not the problem, but this is not the problem.

Mr. HEFLEY. Reclaiming my time, I will say to the gentleman, we have to try to save the money wherever we can save it, and there is where we have a chance to save it.

Mr. OTTER. Mr. Chairman, I rise today in strong support of the amendment offered by

my friend and colleague from Colorado, Mr. HEFLEY. Our simple amendment is a sensible response to the more than $109 billion deficit we will run next year. Reducing spending by one percent in the bill, we lower that number by $185 million and speed the return of balanced budgets.

This amendment does not defund critical programs, but rather encourages federal bureaucrats to become more efficient. Asking federal agencies to get by with 99 cents on the dollar is fair when the American people will be stuck with more than $100 billion of debt to burden their children. Every family cuts back on expenditure when their budget is cut. If federal bureaucrats cannot do the same then they do not deserve the tax dollars of those families.

This bill, as written, is $537 million over the President's request and more than 8 percent higher than last year. Passing the Hefley/Otter Amendment will still leave this bill more than 6.9 percent larger than last years bill and $352 million above the President's request. I appreciate the efforts of Chairman ISTOOK and the entire Appropriations Committee in crafting this bill. They have worked diligently and responsibly under difficult circumstances. I urge them to join with me in supporting this Amendment.

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

The CHAIRMAN. The question is on amendment offered by the gentleman from Colorado (Mr. HEFLEY).

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

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

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Colorado (Mr. HEFLEY) will be postponed.

AMENDMENT NO. 12 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Ms. JACKSON-LEE of Texas:

At the end of the bill (before the short title), insert the following:

SEC. ____. None of the funds made available in this Act may be used to prevent the rehabilitation of urban and rural post offices.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, 2002, the gentlewoman from Texas (Ms. JACKSON-LEE) will be recognized for 2½ minutes, and a Member opposed to the amendment will be recognized for 2½ minutes.

The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, so many of us come to this floor with frustrations that we would hope that our colleagues would join us in fixing.

This amendment deals with the urban and rural post offices so many of us have in our respective districts that go unattended, with dilapidated leaking roofs, and not lighted. This amendment in particular deals with that concept of not preventing resources to be used for fixing those post offices that so many of us use.

Mr. Chairman, I would like to be able to enter into a colloquy on this issue with the distinguished ranking member and the distinguished chairman of this committee. They brought forth an excellent bill, but I have a problem and so many of us have a problem. Mine in particular deals with the Jensen Drive Postal Station in my district where, so many times, I have been promised that it would be repaired for the seniors who use it. First go to Washington, then go back to Houston.

I am concerned that the U.S. Postal Service is not doing enough to improve this facility to serve its customers better. Right now it has only 8 available parking slots of which one is for disabled parking and only 2 are for senior citizens. This is an area dominated by senior citizen residents. This causes traffic jams and creates an unsafe environment.

As this bill moves forward, I would ask the chairman and ranking member, who work so good together, to consider the inclusion of report language that would encourage the Postal Service to work with local officials and community leaders so the need of its facility and its customers are addressed, particularly our elderly and disabled.

Mr. ISTOOK. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Oklahoma.

Mr. ISTOOK. Mr. Chairman, I am pleased to engage in a colloquy with the gentlewoman, and I would be pleased to work with her to address this issue with report language as we go to conference on this bill.

Ms. JACKSON-LEE of Texas. Reclaiming my time, I thank the gentleman for yielding and for his commitment.

Mr. HOYER. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Maryland.

Mr. HOYER. I thank the gentlewoman for raising this issue. She has talked to me and I know she has talked to the chairman. She has been working tirelessly on this issue and has great concern about it. I would be happy to work with her and the Postal Service to address the facilities need of the Jensen Drive Postal Station in Houston.

As the gentlewoman knows, the committee is very concerned with the financial system the Postal Service is in. As the Postal Service continues to address their fiscal deficits, they should not lose sight of the local communities that they serve. That is the gentlewoman's point. She is absolutely right on that point. Her concerns for those with disabilities and the elderly in accessing the Postal Service is absolutely essential.

To that end, I think the gentlewoman will be successful in her efforts working with us.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Texas?

There was no objection.

AMENDMENT NO. 2 OFFERED BY MR. FLAKE

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. FLAKE:

At the end of the bill (before the short title), insert the following:

SEC. ____. None of the funds made available in this Act may be used to provide any grant, loan, loan guarantee, contract, or other assistance to any entity (including a State or locality, but excluding any Federal entity) identified specifically by name as the recipient in a report of the Committee on Appropriations of the House of Representatives or the Senate, or in a joint explanatory statement of the committee of conference, accompanying this Act unless the entity is also identified specifically by name as the recipient in this Act.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, 2002, the gentleman from Arizona (Mr. FLAKE) will be recognized for 2½ minutes and a Member opposed will be recognized for 2½ minutes.

Mr. ISTOOK. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The Chair recognizes the gentleman from Arizona (Mr. FLAKE).

□ 1230

Mr. FLAKE. Mr. Chairman, I yield myself such time as I may consume. We just had a discussion about our ability to rein in spending by the Federal Government. The gentleman from Colorado (Mr. HEFLEY) is exactly right. We ought to save money where we can. We all know that entitlements are running out of control. There are other things that spend money, but we do have control over appropriation bills and discretionary spending that comes to this floor. The problem is we have far too little control. Those of us who do not serve on the Committee on Appropriations are forced to look at only the bill language when we amend on the floor. All we have is the bill. We can only amend what is in the bill. The problem is the bill here in this case for this bill that we are looking at is 103 pages. The committee report, on the other hand, is 135 pages. The bill contains what are called hard marks or directions for spending money. The committee report contains soft marks. We do not have any control. We cannot get at the soft marks here on the floor. Ordinary Members of Congress cannot go

in and cut out pork barrel spending because most of the pork barrel spending happens and is directed within the conference report.

When I brought this amendment on the last appropriation bill we did, I was ruled out of order because we cannot legislate on appropriation bills. My amendment would assume that those who spend the money in Federal agencies actually read our bills. Apparently we do not assume that. They are not directed to. But we know they do because in every case when they spend money they spend the soft marks. If they do not, they are punished the next year by the Committee on Appropriations.

All my amendment says is that unless it is appropriated in a bill, not in a report, in a bill that Members have the ability to amend, then Federal agencies cannot spend it. That is not unreasonable. It is not saying that we not have earmarks. The House, the Congress, has a prerogative to earmark. It simply is saying do it in a bill where we have sunlight, where everybody can see it, we are where we have an open process, not hidden away in some committee language or conference language or a report that nobody can get at. So I think that is a reasonable request. However, I realize that I will be ruled out of order again. I will commit to work on the language to make sure that we can get around the problem.

Mr. Chairman, I ask unanimous consent that the amendment be withdrawn.

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

There was no objection.

The CHAIRMAN. The amendment is withdrawn.

AMENDMENT NO. 7 OFFERED BY MR. SANDERS

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. SANDERS:

At the end of the bill before the short title, insert the following new section:

SEC. . None of the funds appropriated by this Act may be used by the Internal Revenue Service for any activity that is in contravention of Internal Revenue Service Notice 96–8 issued on January 18, 1996, section 411(b)(1)(H)(i) or section 411(d)(6) of the Internal Revenue Code of 1986, section 204(b)(1)(G) or 204(b)(1)(H)(i) of the Employee Retirement Income Security Act of 1974, or section 4(i)(1)(A) of the Age Discrimination in Employment Act of 1967.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, the gentleman from Vermont (Mr. SANDERS) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Vermont (Mr. SANDERS).

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

This tripartisan amendment is cosponsored by the gentleman from Minnesota (Mr. GUTKNECHT), the gentleman from New York (Mr. HINCHEY), and the gentleman from California (Mr. GEORGE MILLER). This amendment has the strong support of the AARP, the largest senior citizen group in America, and the 13 million members of the AFL–CIO. It has the support of the Pension Rights Center and many other groups.

Mr. Chairman, this amendment is about corporate accountability. Today corporation after corporation has been caught misleading their investors. Many of these same companies are doing exactly the same thing with respect to employees' pensions. Mr. Chairman, enough is enough.

This amendment addresses two issues. First it tells companies they must stop discriminating against workers based on age by shifting to the so-called cash balance scheme. Secondly, it tells companies that they must not cheat their employees out of their hard-earned pension benefits. Specifically this amendment would prohibit the Internal Revenue Service from using any funds for activities that violate current pension age discrimination laws, laws that have been on the books since 1986. A similar amendment was passed by voice vote during the consideration of the Fiscal Year 2001 Treasury Postal Appropriations bill but was stripped from the conference report.

Mr. Chairman, age discrimination in general and age discrimination with regard to pensions is unacceptable and must not be allowed to happen. Unfortunately, hundreds of profitable companies across the country, including IBM, AT&T, CBS, and Bell Atlantic, have converted their traditional defined benefit pension plans to the controversial cash balance approach. Cash balance schemes typically reduce the future pension benefits of older workers by as much as 50 percent. Not only is this immoral, it is also illegal because reductions in benefits are directly tied to an employee's age which is in violation of Federal age discrimination law.

What makes these conversions even more indefensible is the fact that many of the companies that make these conversions have pension fund surpluses in the billions of dollars. It is simply unacceptable that during the time of large corporate profits, pension fund surpluses, massive compensation for CEOs including, by the way, very generous retirement benefits, that corporate America reneges on the commitments they have made to workers by slashing their benefits and their pensions.

Mr. Chairman, Congress must stand with older workers and insist that anti-age discrimination statutes are enforced.

Mr. Chairman, let me quote from the letter from the AARP written to me. ''AARP believes that cash balance plans violate current law prohibitions on age discrimination. We commend you,'' me, ''for offering this timely and important amendment. AARP hopes that this amendment will send a strong message that we value older workers and that we reaffirm that older workers should not be subject to age discrimination in their pension plans.'' End of quote from the letter that AARP wrote to me.

In addition, the Pension Rights Center writes in a letter to me, and I quote, ''The Center has long been concerned that cash balance conversions have deprived older workers of their hard-earned expected pension benefits. The Center has joined labor and retiree organizations in taking the position that cash balance conversions should be stopped because they violate age discrimination laws and deprive older employees of expected future benefits that they counted on earning in their traditional defined benefit plans. As a public policy matter, cash balance conversions rank high among abusive practices that corporations have instituted to surreptitiously cut employees' benefits. It is noteworthy that before the current calamities that befell Enron and WorldCom, both companies had converted their secure defined benefit plan to cash balance plans for the purpose of reducing their older employees' benefits and increasing the corporate balance sheet. Both companies then purported to ''improve'' the 401(k) plan only to lure employees into investing into employer stock that soon became worthless.'' Letter from the Pension Rights Center.

Mr. Chairman, through my involvement with the IBM cash balance conversion, I have heard from hundreds of workers throughout the country who have expressed their anger, their disappointment, and feelings of betrayal by cash balance conversions. These are employees who had often stuck with their company when times were tough, these were employees who had often stayed at their jobs precisely because of the pension program that the company offered, and these are the same employees who woke up one day to discover that all of the promises that their companies made to them were not worth the paper they were written on.

Mr. Chairman, this is not acceptable. We must provide protections for these workers who have been screaming out to Congress for help. We must pass this amendment. Large multinational corporations with defined benefit pension plans receive $100 billion a year in tax breaks alone, according to the Office of Management and Budget. Mr. Chairman, the IRS should not be giving tax breaks to companies that willfully violate the pension age discrimination statutes. To do so not only violates public law and policy, it also provides taxpayer subsidies for illegal pension conversions.

Mr. Chairman, there should be no tax breaks for companies that discriminate on the basis of age.

This amendment also has another very important component designed to

protect the pension benefits of American workers. This amendment would also prohibit any funding to the IRS to dilute the requirements of current law as articulated by IRS Notice 96–8. This notice simply tells companies what interest rate to use when calculating their employees' pension benefits. This notice has been upheld by two U.S. Court of Appeals and is vitally important to protecting American workers who have seen their pensions slashed as a result of cash balance conversions.

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

Mr. SAM JOHNSON of Texas. Mr. Chairman, I would like to claim the time in opposition.

The CHAIRMAN. The gentleman from Texas is recognized for 15 minutes.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield myself such time as I may consume.

I rise in opposition to the amendment offered by the gentleman from Vermont (Mr. SANDERS) and I rise as chairman of the Subcommittee on Employer/Employee Relations which has jurisdiction over ERISA, and a member of the Committee on Education and the Workforce with jurisdiction over age discrimination issues. I am also a member of the Committee on Ways and Means which also has jurisdiction on pension issues.

Despite some assertion made recently by the gentleman from Vermont (Mr. SANDERS) as ranking member of the Subcommittee on International Monetary Policy and Trade, he has no jurisdiction over any pension issues.

Congress should be in the business of encouraging, not discouraging, employer-sponsored pension plans. Currently less than half of the Americans who work in the private sector are covered by a retirement plan. The reason for this anemic number is that we have so overregulated these plans that many employers simply decide not to offer this important employee benefit.

The decline in the defined benefit pension plans has been particularly shocking. Earlier this year the Committee on Ways and Means held a hearing on defined benefit pension plans and we heard testimony on the decline of these plans that provide retirees guaranteed income for life. The number of defined benefit pension plans peaked in 1985 at 114,000 plans. In 2001 the number of these plans had fallen to 35,000, a staggering decline of almost 70 percent. The reason for this drop is that these plans were wrapped in so much red tape that employers chose to stop offering this benefit to their employees.

One type of defined benefit pension plan that provides some glimmer of hope that we will not see these plans become extinct is cash balance pension plans. The accrued benefits in these plans are guaranteed not to be reduced, a deal that many of us wish we could find for our shrinking 401(k) and TSP balances. I think that it is important that we maintain the employer's ability to do these things. The employer makes contributions and the employer bears the risk of market reductions, not the employee.

Finally, the United States Government insures cash balance plans through the Pension Benefit Guarantee Corporation in the event that the employer goes bankrupt. These traits are enough of an incentive to businesses that some have begun to offer cash balance defined benefit plans. However, the Sanders amendment would put an end to businesses implementing new cash balance plans. The amendment would prohibit any new guidance being issued by Treasury or the IRS regarding cash balance plans. The sponsors of this amendment claim that it is meant only to prevent the IRS from changing its position on a notice and to prevent them from violating age discrimination law. In reality the amendment attempts to establish new pension rules and is fully within the jurisdiction of the House Committee on Education and the Workforce and the House Committee on Ways and Means. The Department of Treasury is now in the process of issuing new cash balance regulations, some of which we mandated in a bill last year that passed with overwhelming support. Yet this amendment would undercut those regulations. This is not a shoot-from-the-hip type of an issue. It needs to go through a committee of jurisdiction and I urge a no vote on this amendment.

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

Mr. SANDERS. Mr. Chairman, how much time is remaining, please?

The CHAIRMAN. The gentleman from Vermont (Mr. SANDERS) has 8 minutes remaining. The gentleman from Texas (Mr. SAM JOHNSON) has 11 minutes remaining.

Mr. SANDERS. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. GEORGE MILLER), ranking member of the Committee on Education and the Workforce.

Mr. GEORGE MILLER of California. Mr. Chairman, I thank the gentleman from Vermont for yielding me this time, and I thank him for bringing this amendment.

This amendment just addresses a very fundamental question: When will the corporations of America stop raiding the pensions of their workers? If one listens to the gentleman from Texas (Mr. SAM JOHNSON), the suggestion is that corporations will only go to a defined benefit plan or they will only go to a cash balance plan if they think they can continue to raid the cash balance of the pension plan. What they promise their workers they will give them is different than what they will give them. And how do they do that? Because they are down working with the Department of Labor, with the Department of Treasury trying to concoct a means by which they can have unrealistic assumptions about the rates of return and then use that to gyp the workers out of their money.

□ 1245

This is not just the gentleman from Vermont (Mr. SANDERS) who says this; this is not just me who says this. This is what the Inspector General found as they have audited these plans. We find out that the workers are underpaid.

Now, we have been through Enron, we have been through Dynergy, we have been through Merck, and we have been through one scandal after another. What is interesting is that these are many of the same companies that not only killed their workers' 401(k) plans, but now they are also in the process of looting the cash balance plans.

So the question is: Is this Congress going to put a stop to it? Is it going to tell the Treasury Department that they should be able to do as they have been doing and making realistic assumptions about rates of return on these plans, or are they going to engage in some kind of fiction and cooking of the books with the very corporations that have destroyed families across this country?

This is a moment of truth for the Congress. Because the Treasury and the IRS have been doing it one way, it has been upheld in court, it is determined to be fair to the workers, it is determined to return to them the value of the cash out of their pension plan; and now, in come the companies. In come the companies, who have destroyed the stock market, who have destroyed confidence in the American investment system, who have destroyed these people's lives, and now they want us to become their partner in depriving people of tens of millions of dollars that they are owed, that they worked for, and that they were promised.

Now maybe promising somebody something and keeping the promise was old-fashioned in the 1990s, but I have a sneaking suspicion that it is coming back into vogue; that it is going to be a basic value. These companies promised these workers this pension for the work that they did; and when they changed plans, they promised them that they would have a balance; that it was the equivalent of the cash balance of that. Now they want to cook the books.

The question for this Congress is: Are we going to be part of that? The Sanders amendment gives us an opportunity to say no; to say no to age discrimination and to say no to having this Congress and the Treasury Department and the Labor Department be partners in cooking the books. We must pass the Sanders amendment.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield myself such time as I may consume.

The complexity of cash balance plans has been the subject of study of both the Clinton and Bush administrations, and there is no Federal agency in any administration that found that cash

balance plans discriminate on the basis of age.

By its own admission, the Internal Revenue Service is trying to clarify some of the ambiguities under its own notice 96–8. The passage of this amendment, in our view, would prevent the IRS from modifying 96–8, a circumstance which could cause significant harm to many workers.

So I would say that this amendment simply bars the administration, which started under Clinton and now continues under Bush, from trying to fix some of the problems that occur with our pension system.

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

Mr. SANDERS. Mr. Chairman, I yield 2 minutes to the gentleman from Minnesota (Mr. GUTKNECHT).

Mr. GUTKNECHT. Mr. Chairman, I want to thank the gentleman for yielding me this time, and I rise in support of the Sanders amendment.

Mr. Chairman, I agree with some of the things the gentleman from Texas just said, and, that is, that the IRS has been studying this thing for about 5 years, 5 years, and during that time millions of Americans have seen their pensions change and the amount of money they expected to receive dramatically changed while the IRS has studied this.

This amendment is pretty straightforward. It just says it is time for the IRS to get off the dime and come to a clear conclusion, the conclusion that I think anyone who studies this issue objectively for more than 10 minutes will come to, and, that is, for older workers, when they convert from a defined benefit plan to a cash balance plan, the older workers lose. That is a fact.

Now, I am not on any of the committees of jurisdiction. I am not on the Committee on Ways and Means; but I did serve on the pension commission back in the State legislature, and I do come from a part of the country where a deal is a deal and a bargain is a bargain. And what happened many years ago, the Congress made a bargain with large employers. We called it ERISA. And the bargain was this: if you take good care of your workers, we will protect you from legislation in the 50 States. You will only have to deal with one set of regulations.

Now, my colleagues, we never broke that bargain; but major corporations have. They have changed the bargain on pensions. And when they make these conversions, the truth of the matter is a lot of that money is freed up and can be transferred to other parts of that company's budget. Now, you may not want to call it raiding the pension funds, but that has been the net practical effect, and millions of workers have lost.

This is a straightforward amendment. It makes sense. It sends a clear signal to the IRS that it is time to get off the dime and make it clear that when they make these conversions, older workers lose. That is wrong, and it is time for Congress to do something about it.

Mr. SAM JOHNSON of Texas. Mr. Chairman, how much time remains?

The CHAIRMAN. The gentleman from Texas has 10 minutes remaining.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. HOUGHTON), a member of the Committee on Ways and Means.

Mr. HOUGHTON. Mr. Chairman, I thank the gentleman for yielding me this time, and I thank the gentleman from Vermont.

I happen to feel, and I have been around this pension business a long time, that the Sanders amendment is going to unfairly tie the hands of the Treasury Department. Now, that is not important to some people, but it is to the general public.

When it comes to writing new rules and issuing determination letters for defined benefit pension plans, the history is this: the Treasury and IRS issued a proposed ruling in 1996, and of course this is now in need of updating and improvement. The Sanders amendment, and I can understand where the gentleman from Vermont is coming from, but it really, I think, could have damaging effects if adopted.

The cash balance pension conversions have already been thoroughly addressed by this body right on this floor. A number of hearings in the 105th and 106th Congresses were held by the relevant committees of jurisdiction; and Congress included in the 2001 tax law a provision expanding the disclosure, the disclosure obligations of employers when they convert to a cash balance defined benefit plan. Congress concluded at that time that enhanced disclosure was the proper response to the issue surrounding cash balance conversions, not stopping action by the IRS to revise guidance on the proposed rules.

The Federal agencies, such as the IRS and the Treasury, responsible for jurisdiction over the pension age issues, are currently engaged in a thorough review of these age discrimination questions. The Subcommittee on Oversight of the Committee on Ways and Means, which I am a member of, held a hearing last month on defined benefit plans; and we would have the jurisdiction over any changes to the existing law. Unfortunately, this amendment that we are looking at today cuts into the legislative jurisdiction of the Committee on Ways and Means and also the work which it is trying to do.

So, Mr. Chairman, I really feel that this is an unfortunate amendment at this particular time, and I would hope people would oppose it.

Mr. SANDERS. Mr. Chairman, could I inquire about the time for both sides, please?

The CHAIRMAN. The gentleman from Vermont (Mr. SANDERS) has 3 minutes remaining, and the gentleman from Texas (Mr. SAM JOHNSON) has 7½ minutes remaining.

Mr. SANDERS. Mr. Chairman, I am proud to yield 1½ minutes to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Chairman, beginning in 1995, this Congress began a process of reducing regulations and freeing up the activities of corporations across America. They also, during the beginning of that period of time, weakened the IRS. The result of that is the kind of corporate scandals, the kind of corporate crime wave we see sweeping across the country today.

One of the less noticed aspects of that corporate crime wave includes the way in which corporations have been robbing the pension systems of American workers. They have been doing that by shifting from a so-called defined benefit program, where the benefits are clear and well stated, to a cash balance program, which enables them to manipulate the pension program and, in fact, provide lesser benefits to the employees, to the workers, over periods of time as they retire.

That has got to stop. The only way it can be stopped is by requiring the IRS, which has been weakened by the leadership of this House, to step forward and enforce the laws as they were intended to be enforced. That is what this amendment would do. It would require the IRS to enforce the laws, and it would stop the pension abuse that is going on by corporations across this country that are costing American workers and their families hundreds of millions of dollars.

We have the obligation and the responsibility to stop it. The only way we can stop it is by passing this amendment. Therefore, I hope and trust that the majority of the people in this House will step forward and recognize their responsibilities and pass this amendment.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio (Mr. BOEHNER), the chairman of the Committee on Education and the Workforce.

Mr. BOEHNER. Mr. Chairman, I thank the gentleman for yielding me this time, and let me rise today in opposition to the amendment offered by the gentleman from Vermont (Mr. SANDERS) and others that really would be a back-door attempt at making substantive changes to our pension law.

The fact is that this issue has been debated in the Portman-Cardin bills from 1998, 1999, 2000, and 2001. We also dealt with it in the Pension Reform Act we had on the floor of this House this past spring. In every case, the Congress has decided not to discourage the conversion to cash balance plans.

Now, cash balance plans are a hybrid between traditional defined benefit plans and defined contribution plans like 401(k) plans. Companies that have traditional defined benefit plans were under pressure, under pressure from younger workers, who felt that they were not getting the benefit of their pension benefits until they had stayed

there for 20 or 30 years. These conversions to cash balance plans, these hybrids, are in the best interest of all employees of these companies.

Now, we should all know that there have been over 500 conversions from defined benefit plans to cash balance plans. In almost every single case, companies made all employees whole. Now, there is a case, and maybe a case and a half, where companies early on did not do this. And the gentleman who is the sponsor of the amendment, and his colleagues who are sponsoring amendments, all happen to represent various facilities of the one company who did not do a very good job in their conversion.

We do not want to make this huge change in pension laws on an appropriation bill. It is not the right venue. The gentleman, I am sure, is well aware of that. On top of that, the policy that is being proposed here is not the right policy for the interest of American workers.

Younger workers want to be able to see what kind of pension benefits they have accumulated. Cash balance plans are a way for traditional companies with defined benefit plans to in fact do that.

I think this is unwise. We should not go down this path today, and I would urge my colleagues to reject the amendment offered by the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Chairman, I thank the gentleman from Vermont for yielding me this time.

Mr. Chairman, the previous speaker made an indication that many companies have switched over or converted to cash balance plans and employees have been made whole. That simply is not the fact. It is not what is happening. A large number of older Americans, people 40 years and older, have in fact lost up to 50 percent of the value of their plans.

This is not some substantive change in the law that is being asked for here. The gentleman from Vermont, much to his credit, has come forward and said we will just make sure that the IRS is not adding insult to injury, and that in fact, when people stand that risk of having their pension that they worked long and hard to secure taken away from them by a conversion, the IRS will not allow any monies to go to doing that. They will in fact have to enforce the law.

□ 1300

The law says we cannot discriminate in such situations. The Inspector General at the Department of Labor has found out that discrimination is going on when you shift to a cash balance plan. Over 20 percent of the 60 plans that were audited resulted in those employees not getting what they were entitled to. If we extrapolate that number out, we find out the damage is $185 million to $190 million annually.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield 3 minutes to the gentleman from North Dakota (Mr. POMEROY), a member of the Committee on Ways and Means.

Mr. POMEROY. Mr. Chairman, I want to begin by congratulating the sponsors of this amendment for their tireless efforts, in particular on behalf of employees in their particular districts affected by a poorly executed conversion and their efforts thereafter to make sure that the concern realized in that particular instance is not realized again.

I also congratulate them for advancing this amendment because I believe it calls attention to a very important issue of pension conversion and our great concern that people be treated fairly and there not be age discrimination as their conversions move forward.

Having said that, I respectfully disagree with this amendment on this appropriations bill. This is a very substantive alteration of ERISA law. It is technical, it is complex, and there could be unintended consequences. The consequence I am most worried about is, rather than the conversion from defined benefit to cash balance, we are going to have something even more dramatic and disadvantageous to the employee, movement to defined contribution plans or gradual elimination of the pension benefit altogether.

We operate in an environment where employers are not mandated to provide these benefits, and 50 percent of the people in the workforce today have no at-work savings. Therefore, as we try to address these concerns, if we smack employers with perceived additional costs, we absolutely stop the efforts to get additional employers to offer retirement savings plans, and I believe we accelerate the conversion from defined benefit to defined contribution plans.

Reasonable minds may differ on this, and I do not question for one instance the absolute sincerity in the purpose behind this amendment. I just think strategically that this is not the way to go at this time. I think the fact that the amendment has been offered and is debated sends a very clear signal to the Department of Treasury that this is not the time for them to be altering that rule.

I think on the other hand their administrative processes should move forward, the committees of jurisdiction should carefully watch over those processes, and particularly interested Members of Congress should also watch this process; and if we, indeed, see the rule being altered in a way that has a discriminatory effect on elderly workers, we ought to act at that time.

But to react now changing ERISA by an amendment on an appropriations bill without a hearing, without careful deliberation about the full range of what the consequences might be, this is reckless stuff on very important business. There is not a worker in the workplace today with a retirement savings plan that is not darn scared about what is happening in the stock market and their security of income and retirement. We should not compound the confusion, the anxiety, or raise other questions by passing this amendment at this time.

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

Mr. Chairman, the American people are outraged at the degree to which corporate America has ripped off investors and workers, and millions of American employees are equally outraged at the degree to which corporate America has ripped off their pension plans.

Let us pass this amendment. Let us join with the AARP, let us join with the AFL–CIO, let us join with the Pension Center and say ''yes'' to American workers that they deserve what they have been promised.

Mr. SAM JOHNSON of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, both the Department of Labor and the Treasury Department are trying to examine the regulations and their effect on cash balance plans.

The recent DOL Inspector General's report indicates there is confusion on the part of employers as to the rules to be applied to distributions from cash balance plans. The two Departments need time to develop rules that are both understandable to employers and not harmful to workers' benefits under these plans.

Congress must not impede the normal regulatory process of the agencies by removing the flexibility they presently enjoy to craft rules in the pension area. The Congress should be trying to encourage the growth of employer-sponsored pension plans; and passage of the Sanders amendment will have a chilling effect on cash balance plans. The Federal Government should promote policies that will encourage employers, particularly small businesses, to sponsor pension plans. As the baby boomers age, we need increased pension plan coverage. Passage of this amendment will impede that growth. I recommend a vote against this amendment.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont (Mr. SANDERS).

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

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

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Vermont (Mr. SANDERS) will be postponed.

AMENDMENT NO. 23 OFFERED BY MR. BARR OF GEORGIA

Mr. BARR of Georgia. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 23 offered by Mr. BARR of Georgia:

Insert at the end before the short title the following:

SEC. . None of the funds made available in this Act under the heading ''Special Forfeiture Fund (Including transfer of funds)'' to support a national media campaign shall be used to pay any amount pursuant to contract number N00600-02-C-0123.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, 2002, the gentleman from Georgia (Mr. BARR) and the gentleman from Maryland (Mr. HOYER) each will control 10 minutes.

The Chair recognizes the gentleman from Georgia (Mr. BARR).

Mr. BARR of Georgia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a very simple amendment. It is just as important for what it does not do as for what it does. This amendment, goes to an issue regarding funding for the antidrug media campaign, which is a very important part of our government's overall antidrug message, and whether or not that program shall continue to be administered by outside companies benefiting greatly, to the tune of hundreds of millions of dollars of taxpayers' money, should be limited to companies with a good, honorable, upstanding, noncorruptable track record in dealing with the government.

There is one company in particular which has benefited greatly from taxpayer dollars in putting together the ads and buying the ad time for the media antidrug campaign, and that is Ogilvy & Mather Corporation. This company has already entered into a civil settlement with the government well in excess of $1 million, almost $2 million, for fraud in connection with overbilling and other fraudulent contracting practices. The company is reportedly still under investigation by the Department of Justice, that is the FBI and the U.S. Attorney's Office for the Southern District of New York.

Insofar as there is a contract which has just been let which would go through the year 2003 or through fiscal year 2003 for many hundreds of millions of dollars, we think it is prudent right now here in the House, and the Senate is doing likewise, to say to the American people through this amendment on the House side that none of the funds made available under this act may be used right now for the continuation of this particular contract because of the very serious questions which have been raised about this company.

I would like to make very clear that this amendment, if adopted, and I do believe the gentleman from Oklahoma (Mr. ISTOOK) is prepared to accept this amendment, and I hope the other side will, too, this amendment will not and is not intended to stop in any way, shape, or form or slow down the antidrug media campaign. It is designed to strengthen it by ensuring that we have corporations involved in the delivery of that message and the buying of the time to get that message out that are reputable and do not themselves raise serious questions about the integrity of the program.

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

Mr. BARR of Georgia. I yield to the gentleman from Oklahoma.

Mr. ISTOOK. Mr. Chairman, we are both very supportive of the media campaign, and we wish for it to continue; but what I want to make sure that we clarify through the colloquy is that despite what may be the concerns that some may have with the language, the intent of this amendment is not to shut down the media campaign.

Mr. BARR of Georgia. Mr. Chairman, I thank the gentleman for that question. Like the gentleman, I support the antidrug media campaign. It delivers a powerful message to youth and families across the country about the dangers of illicit drugs. It is an important weapon aimed at reducing drug abuse.

I am not seeking to prevent that message from being delivered loud and clear. The message I also want to send loud and clear through this amendment is that this media campaign is too important to allow a company that has already admitted to defrauding the government and reportedly remains under criminal investigation to receive more taxpayer dollars at this time.

Mr. ISTOOK. Mr. Chairman, if the gentleman would continue to yield, I understand the intent of the amendment is to allow further competition to make sure that other capable media firms are able to compete for the public funds to buy time for this important antidrug campaign on different media outlets.

Mr. BARR of Georgia. Mr. Chairman, yes. Again, I seek to restore integrity to the media campaign to ensure its ongoing success, not to end it. It is time to draw a line in the sand and take a stand. It is shameful for the government to reward any company that has admitted to fraud and reportedly is subject to part of a criminal investigation for its action.

Mr. ISTOOK. Mr. Chairman, if the gentleman would continue to yield, I do understand and I sympathize with the concerns of the gentleman from Georgia (Mr. BARR). I want to make sure that the gentleman understands that the purpose of this is to ensure that this program continues in a proper fashion, that the ad campaign is not disrupted, and that only those who properly should be handling it are involved in contracts for this matter.

I ask the gentleman, will he be willing to work with us during conference to modify the language as I expect will probably be necessary to ensure that there are no unintended consequences from this amendment, and that there is no disruption of this very important national antidrug campaign?

Mr. BARR of Georgia. Mr. Chairman, I wish to assure the gentleman that is my intent. My intent is that we continue the campaign and spend taxpayer dollars appropriately. Should we find another approach to reach that goal, I would be happy to join with the chairman and others in refining the language appropriately.

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

Mr. HOYER. Mr. Chairman, I yield 30 seconds to the gentleman from Maryland (Mr. CUMMINGS).

Mr. CUMMINGS. Mr. Chairman, I was pleased to hear the sponsor say that he wanted to see the program continue. One of the things I was interested in is that there have been defense contractors, like Halliburton, which have done things that were illegal; and I was just wondering whether the gentleman will take the same stand with regard to defense contractors who might have violated the law?

Mr. BARR of Georgia. Mr. Chairman, will the gentleman yield?

Mr. CUMMINGS. I yield to the gentleman from Georgia.

Mr. BARR of Georgia. Mr. Chairman, if the gentleman from Maryland looks at my record both as a United States Attorney and as a member of the Committee on the Judiciary, the Committee on Government Reform, and the Committee on Financial Services, he will see that I am very consistent in going after corruption, regardless of party, regardless of company.

Mr. HOYER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan (Ms. KILPATRICK).

Ms. KILPATRICK. Mr. Chairman, I stand to support the Barr amendment, and to thank the chairman for agreeing to work with the gentleman from Georgia (Mr. BARR) and others as we go to conference to make sure that we do not stop this worthy program. Drugs in America is a cancer. We must do all we can to support our children.

□ 1315

At the same time, we must make sure that our Federal dollars that have been appropriated are spent wisely.

This company in question has padded their books, has been found guilty of $1.8 million overcharging the Federal Government. It is important that we monitor all of these contracts and that the moneys being used for advertising go to those communities where the most need is.

It is important that the gentleman from Georgia has introduced this amendment. I look forward to working with him and the chairman and our ranking member and just to reiterate how important it is that as we spend these advertising dollars, we select those companies who have the same mission that we have, which is to make sure the advertising gets out correctly, that they do not pad their bills and mischarge the Federal Government and come back for further business.

I stand in support of the gentleman's amendment barring payment of contracts to support a national media campaign to any

company that has entered into a settlement to pay claims against it by the Federal Government.

As far back as March of 1999, I began investigating the policies and procedures of awarding Federal advertising contracts. My investigation began with the advertising agency that had the ONDCP contract prior to the current agency that has settled with the government to pay 1.8 million dollars for padding vouchers.

The amendment is necessary not only to prohibit funds to the current agency (Ogilvy & Mather) who padded their invoices and overcharged the government, but also because there are several large Federal Government advertising contracts where the same allegations are being made.

The Army has an approximately $150 million annual advertising campaign to recruit and retain enlistees. The Center for Disease Control (CDC) has launched an annual $125 million advertising campaign to combat obesity to target kids.

Once awarded most government advertising contracts can be renewed for up to four additional years. Mr. Speaker, we must put a stop to the practice of blindly awarding government advertising contracts.

In this era of corporate irresponsibility we must make corporations more accountable for their actions. We cannot allow taxpayer dollars to go to corporations that shortchange the American People.

I urge a yes vote on the gentleman's amendment.

Mr. HOYER. Mr. Chairman, I thank the gentlewoman from Michigan (Ms. KILPATRICK) for her contribution to the debate.

Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Chairman, I rise as chairman of the authorizing subcommittee for the Office of National Drug Control Policy and the media campaign to raise a couple of points about this important matter. I believe the most important thing we need to do is protect the media campaign, and there is a big dispute about the best way to do that. I was hoping this could be worked out in conference and I am comforted by some of the words here in the debate, but I am reluctantly going to oppose the amendment.

I believe the media campaign is one of our only national programs that we have to try to reduce demand for illegal drugs, and I appreciate the efforts of the gentleman from Georgia as well as other members of our subcommittee to try to hold accountability and effectiveness in the media campaign, and we agree on that fundamental point. I am very disturbed about some of the process of the bidding. I am disturbed about the violations of the law that Ogilvy has committed.

I am concerned about the processes of how the creativity is done. But I also do not want the media campaign to go dark which the administration has maintained could happen depending on how this goes. I am concerned that if the Senate language and the House language are too similar, this could be conferenced and not give us the flexibility.

We have a hearing scheduled for Friday to look and see whether this would cause the media campaign to go dark. We need tougher answers from the administration to make sure that they are not being biased in the bidding process as opposed to real concerns that the media campaign can go dark. I believe this needs a more careful approach. Generally speaking, I totally agree with the gentleman from Georgia's point. When somebody has violated the confidence of the taxpayers, they should not be rebid unless there is compelling evidence, but in the Committee on Government Reform, we have seen other agencies where, for example, in long-term care, we have had to continue with some organizations, at least for a period of time, to make sure that the people are serviced as opposed to using an arbitrary one-size-fits-all standard.

I agree with the goals of this amendment. I believe that we need to carefully review the process. I would hope that whatever happens with this amendment, that the conference committee will continue to look through and make sure that the media campaign can stay up and on the air. We have a very effective antiterrorism message right now, but at this point, I reluctantly oppose the amendment.

Mr. BARR of Georgia. Mr. Chairman, I yield myself such time as I may consume.

The opposition by the distinguished chairman is completely mystifying. There is plenty of money in the pipeline, I would remind the distinguished chairman of the subcommittee. This amendment that we are looking at now, I would remind respectfully the chairman of the subcommittee, does not kick in even if it is adopted until the next fiscal year. There is absolutely nothing in this amendment, and I wish to again assure the chairman of the subcommittee as I assured in the colloquy with the chairman of the appropriations subcommittee, it is not our intent to cause any part of the antidrug program to go dark. It will not go dark. I do not know how much clearer we can make that. That is not our intent. This will not do it. This has to do with the next fiscal year. There is already money fully in the pipeline for whatever company the government contracts with, including Ogilvy & Mather, to continue their work. This simply gets a marker into the conference and that is what I wish to assure the chairman of the subcommittee and ask for his support on that basis.

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

Mr. BARR of Georgia. I yield to the gentleman from Indiana.

Mr. SOUDER. Mr. Chairman, does the drug czar of the administration agree that the campaign will not go dark?

Mr. BARR of Georgia. It does not matter whether they agree or not. There is nothing in this amendment, absolutely nothing, I assure the chairman, that will cause it to. And if, in fact, there is any problem that makes it apparent that this specific approach would cause a problem, as I stated in the colloquy and I state to the distinguished gentleman from Indiana, we will be glad to work, and I am sure that the other members of the conference committee would be glad to work to assure that that does not happen.

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

Mr. HOYER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Michigan (Mr. LEVIN).

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

Mr. LEVIN. Mr. Chairman, as someone who, with the gentleman from Ohio (Mr. PORTMAN) and others has worked on this important program, I am glad to hear the assurances that this program will continue. We have to be careful about the integrity of the contracting process. I hope all of us agree on that. As we implement our care with the integrity of the process, we also have to be sure that this important program is not shut down. It has had some successes and it has had some lack of successes, but overall, it is critical that the media effort, the outreach on drugs, that this effort continue.

So we will take the assurances of the sponsor of the amendment and it will go over to the Senate and then into conference, and I assume that those assurances will be implemented in the final language. It is the next fiscal year, but if there has to be recontracting, there could be a hiatus if we are not careful and we have to make sure there is no hiatus in this effort to make sure that the message about the danger of drugs is carried throughout this country effectively.

Mr. HOYER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Maryland (Mr. CUMMINGS), the ranking member of the Subcommittee on Criminal Justice, Drug Policy and Human Resources.

Mr. CUMMINGS. Mr. Chairman, I thank the gentleman for yielding time. I just want to reiterate what the gentleman from Michigan (Mr. LEVIN) just said. I think that it is very important that at a time when so many of our young people are becoming addicted to drugs, and certainly I, along with the gentleman from Indiana (Mr. SOUDER) of our drug subcommittee, have traveled with our subcommittee all over this country, and we realize that drugs have no boundaries, that we keep the campaign intact. The campaign is not perfect. There are some things that we need to do to make it more effective, but we really do not want it to go dark. I understand the gentleman's concerns, but I want to make sure that we give every parent every tool that they can possibly have to help lift their children up so that they can be all that God meant for them to be.

Mr. Chairman, I rise in opposition to the amendment by Mr. BARR.

Mr. BARR's amendment would prohibit ONDCP from honoring a contract with advertising firm Ogilvy & Mather, under which Ogilvy would continue to provide advertising and advertising-related services that are central to the operation of ONDCP's Youth Anti-Drug Media Campaign.

If this provision is enacted, it will shut down the media campaign for at least the next year, and it will only make more difficult the task of reauthorizing and retooling this important program. Mr. BARR states that this is not his objective, but it will be the effect. So while the ostensible target is Ogilvy, the real victims of the Barr amendment will be American families who might benefit from the campaign's anti-drug messaging.

If this amendment passes, Mr. Chairman, it will effectively shut down the National Youth Anti-Drug Media Campaign—at least for the next year. If this amendment passes, the Media Campaign will go dark in most media markets by January 2003 and totally dark by March 2003. In fact, the consequences are even more far-reaching: (1) there would be no activity for nearly 75 percent of the program; (2) the Advertising Council would lose nearly 50 percent in pro bono match; and (3) the Partnership for a Drug Free America and ONDCP would lose an additional match of $23 million. These are irreversible consequences.

Additionally, the Campaign would be required to eliminate all local market and state-by-state media activity (local newspapers, local radio, local out-of-home media and local television media buys).

As Ranking Minority Member of the Government Reform Subcommittee on Criminal Justice and Drug Policy, I believe that the National Youth Anti-Drug Media Campaign is an important part of our national drug control strategy. Anti-drug messaging has worked in the past to reduce drug use among children and teens, and in many places across the country it appears to be working now.

Recent evaluations of the media campaign have not shown us the overall results we'd like to see in terms of reducing marijuana-usage among youth. But the same evaluations do show that anti-drug ads are being seen and remembered by parents and youth, and that ads targeting parents have been effective in getting parents to engage their children on the issue of drugs. Mr. Chairman, as a parent, one of the anti-drugs ads that I remember so vividly states this level of effectiveness most accurately—it reads and I paraphrase: Parents are the anti-drug. In my own 7th Congressional district in MD, there are 60,000 addicts in the City of Baltimore alone. Most of whom started using drugs in their early teens. I firmly believe that if their parents had talked to them about drugs and drugs use—there would be a lot fewer than 60,000 addicts. I think many of my colleagues would agree with this conclusion.

Mr. Chairman, the Barr amendment attempts to circumvent Federal contracting law in order to impose upon one company punishment that similarly-situated companies would not suffer.

Take, for example, Halliburton. This is a company that has profited, and continues to profit, enormously from multiple contracts with the Department of Defense. In February of this year, Halliburton subsidiary KBR reached a $2 million settlement with the government, amid criminal allegations of fraud, false claims, and false statements. KBR was subsequently awarded a ten-year unlimited-cost contract with the Army. Did we see a similar Barr amendment to the Defense Department Appropriations bill? No, Mr. Speaker, we didn't. And I think we have to ask why we are singling out one company and one program for special treatment—especially in view of the crippling effect this provision would have on the media campaign.

If we're going to set aside the duly enacted laws and regulations that the Congress and executive branch have devised to prevent abuse by Federal contractors, it seems to me we ought to be fair and consistent about it. Either it's good policy or it's not. If it's good for Ogilvy and ONDCP, then it ought to be good for Halliburton and the Army as well.

Can the campaign do better? I believe so. Will it do better? It will if we work together to make it better. For my part, I am committed to working with Mr. SOUDER, Mr. PORTMAN, members of the drug policy subcommittee, our counterparts in the Senate and ONDCP Director Walters to work through the problems with the campaign, with the single aim of making it as effective as it can be.

The amendment by Mr. BARR is simply not constructive toward this end. While it may make Members feel better to go after an easy political target in Ogilvy, the bottom line we should all be concerned with is this: passing this amendment will not improve the campaign. It will simply shut it down. I know that my colleagues want to avoid this result.

So I would say to my colleagues that if shutting down the media campaign is what Members want to accomplish, then they should vote for the Barr amendment. If they want to see the campaign live to do a better job of deterring our children from using drugs, then they should join Mr. SOUDER, Mr. PORTMAN and me in opposing this amendment. Let's not cut off our nose to spite or face.

DEFENSE CRIMINAL INVESTIGATIVE SERVICE PRESS RELEASE

The Office of the Inspector General (OIG), Department of Defense (DoD), announced today that on February 7, 2002, a settlement was reached with Brown and Root Services Corporation (BRSC), Houston, TX, regarding allegations of fraud, false claims and false statements. BRSC will pay $2 million in damages to the U.S. Government.

BRSC was the subject of a qui tam lawsuit filed by a former BRSC employee who alleged BRSC engaged in international false statements and misrepresentations to the Army Corps of Engineers during negotiations for individual delivery orders issued under a job order contract (JOC) for the former Fort Ord, CA, military installation. Over 200 individual delivery orders were issued under the Fort Ord JOC, valued in excess of $18.4 million. The alleged conduct resulted in the overvaluation of the cost of material and construction methods provided by the BRSC. The former BRSC employee who filed the qui tam lawsuit alleged that BRSC project general managers directed BRSC construction cost estimators to inflate the quantity and quality of higher cost materials and then present the inflated value of those materials to U.S. Army Corps of Engineers personnel during negotiations.

The settlement reached with the BRSC releases them from the civil claims addressed in the qui tam lawsuit. The qui tam relater will receive an undisclosed amount of the collected damages.

This investigation was conducted by the Defense Criminal Investigative Service (the criminal investigative arm of the OIG, DoD). Assistant United States Attorneys Michael Hirst, Chief of the Affirmative Civil Enforcement Unit, and Kandall Newman, Eastern District of California, Sacramento, CA, negotiated the global settlement.

[From the New York Times, July 13, 2002]

IN TOUGH TIMES, A COMPANY FINDS PROFITS IN TERROR WAR

(By Jeff Gerth and Don Van Natta, Jr.)

The Halliburton Company, the Dallas oil services company bedeviled lately by an array of accounting and business issues, is benefiting very directly from the United States efforts to combat terrorism.

From building cells for detainees at Guantanamo Bay in Cuba to feeding American troops in Uzbekistan, the Pentagon is increasingly relying on a unit of Halliburton called KBR, sometimes referred to as Kellogg Brown & Root. Although the unit has been building projects all over the world for the federal government for decades, the attacks of Sept. 11 have led to significant additional business. KBR is the exclusive logistics supplier for both the Navy and the Army, providing services like cooking, construction, power generation and fuel transportation. The contract recently won from the Army is for 10 years and has no lid on costs, the only logistical arrangement by the Army without an estimated cost.

The government business has been well timed for Halliburton, whose stock price has tumbled almost two-thirds in the last year because of concerns about its asbestos liabilities, sagging profits in its energy business and an investigation by the Securities and Exchange Commission into its accounting practices back when Vice President Dick Cheney ran the company. The government contracts, which the company said Mr. Cheney played no role in helping Halliburton win, either while he led the company or after he left, offer the prospect of a long and steady cash flow that impresses financial analysts.

Since the Sept. 11 attacks, Congress has appropriated $30 billion in emergency money to support the campaign against terrorism. About half has gone to the Pentagon, much of it to buy weapons, supplies, and services. Although KBR is probably not the largest recipient of all the government contracts related to terror efforts, few companies have longer or deeper ties to the Pentagon. And no company is better positioned to capitalize on this trend.

The value of the contracts to Halliburton is hard to quantify, but the company said government work generated less than 10 percent of its $13 billion in revenue last year.

The government business is ''very good, a relatively stable source of cash flow,'' said Alexandra S. Parker, senior vice president of Moody's Investors Service. ''We view it positively.''

By hiring an outside company to handle much of its logistics, the Pentagon may wind up spending more taxpayer money than if it did the work itself.

Under the new Army contract, KBR's work in Central Asia, at least for the next year, will cost 10 percent to 20 percent more than if military personnel were used, according to Army contract managers. In Uzbekistan, the Army failed to ascertain, as regulations require, whether its own units, which handled logistics there for the first six months, were available to work when it brought in the contractor, according to Army spokesmen.

The costs for KBR's current work in Central Asia could ''dramatically escalate'' without proper monitoring, but adequate cost control measures are in place, according to Lt. Col. Clay Cole, who oversees the contract.

The Army contract is a cost-plus arrangement and shrouded in secrecy. The contractor is reimbursed for its allowable costs and gets a bonus based on performance. In the past, KBR has usually received the maximum performance bonus, according to Pentagon officials. Though modest now, the Army contract could produce hundreds of millions of dollars for the company. In the Balkans, for instance, its contract with the Army started at less than $4 million and turned into a multibillion-dollar agreement.

Mr. Cheney played no role, either as vice president or as chief executive at Halliburton, in helping KBR win government contracts, company officials said.

In a written statement, the company said that Mr. Cheney ''steadfastly refused'' to market KBR's services to the United States government in the five years he served as chief executive. Mr. Cheney concentrated on the company's energy business, company officials said, though he was regularly briefed on the company's Pentagon contracts. Mr. Cheney sold Halliburton stock, worth more than $20 million, before he became vice president. After he took office, he donated his remaining stock options to charity.

Like other military contractors, KBR has numerous former Pentagon officials who know the government contracts system in its management ranks, including a former military aide to Mr. Cheney when he was defense secretary. The senior vice president responsible for KBR's Pentagon contracts is a retired four-star admiral, Joe Lopez, who was Mr. Cheney's military aide at the Pentagon in the early 1990's. Halliburton said Mr. Lopez was hired in 1999 after a suggestion from Mr. Cheney.

''Brown & Root had the upper hand with the Pentagon because they knew the process like the back of their hand,'' said T.C. McIntosh, a Pentagon criminal investigator who last year examined some of the company's Army contracts in the 1990's. He said he found that a contractor ''gets away with what they can get away with.''

For example, KBR got the Army to agree to pay about $750,000 for electrical repairs at a base in California that cost only about $125,000, according to Mr. McIntosh, an agent with the Defense Criminal Investigative Service.

KBR officials did not dispute the electrical cost figures, which were part of an $18 million contract. But they said government investigators tried to suggest wrongdoing when there was not any.

''The company happened to negotiate a couple of projects we made more money on that others,'' said one company lawyer, who insisted on anonymity. He added, ''On some projects the contractor may make a large or small profit, while on others it may lose money, as KBR sometimes did on this contract.''

Mr. McIntosh said he and an assistant United States attorney in Sacramento were inclined to indict the company last year after they developed evidence that a few KBR employees had ''lied to the government'' in pricing proposals for electrical repair work at Fort Ord. Mr. McIntosh said the Sacramento prosecutor said to him, ''Let's go for this, it's a winnable criminal case.''

A KBR lawyer said that the government's theory ''was novel and unfairly tried to criminalize what was only a preliminary proposal.''

The United States attorney's office in Sacramento declined to discuss its internal deliberations in the cast. But it dropped the criminal inquiry and reached a civil settlement in February, in part because of weak contract monitoring by the Army, according to Mr. McIntosh and a lawyer involved in the case.

As part of the settlement, KBR paid $2 million but denied any liability.

Last December the Army's Operations Support Command, unaware of the criminal investigation, found KBR's past contracting experiences to be exemplary as it awarded the company the 10-year logistical support contract, according to a command spokeswoman, Gale Smith.

The Army command's lengthy review of bidders did not discover that KBR was the target of a criminal investigation though it was disclosed in Halliburton's annual report submitted with the bid, according to Ms. Smith. She said that if the support command's managers had known of the criminal inquiry, they would have looked further at the matter but not changed the award.

KBR's ability to earn the Pentagon's trust dates back decades.

''It's standard operating procedure for the Department of Defense to haul in Brown & Root,'' said Gordon Adams, who helped oversee the military budget for President Bill Clinton.

The company's first military contract was in 1940, to build a Naval air station in Corpus Christi, Tex. In the 1960's, it built bases in Vietnam. By the 1990's, KBR was providing logistical support in Haiti, Somalia and the Balkans.

KBR's military logistics business began to escalate rapidly with its selection for a $3.9 million contract in 1992, Mr. Cheney's last year at the Pentagon. Over the last 10 years, the revenues have totaled $2.5 billion, mostly a result of widening American involvement in the Balkans after 1995.

''We did great things to support the U.S. military overseas—we did better than they could support themselves,'' said Charles J. Fiala, a former operations officer for KBR. ''I was in the Department of Defense for 35 years. We knew what the government was like.''

Robert E. Ayers, another former KBR executive who still consults for the company, said Mr. Cheney ''stayed fairly well informed'' on the Balkans contract.

Stan Solloway, a former top Pentagon procurement official who now heads an association of contractors, said the company ''understood the military mind-set'' and ''did a very good job in the Balkans.''

But reports in 1997 and 2000 by the General Accounting Office, the audit arm of Congress, found weak contract monitoring by the Army contributed to cost increases in the Balkan contract that benefited KBR.

The audit agency's 1997 report concluded that the Army allowed KBR to fly in plywood from the United States, at a cost of $85.98 a sheet, because it did not have time to procure it in Europe, where sheets costs $14.06.

Mr. Ayers, the former KBR executive, had worked on the Balkans contract. ''If the rules weren't stiff and specific,'' he said, ''the contractor could make money off of overspending by the government.''

The contract awarded last December by the Army's Operations Support Command, is ''open ended'' with ''no estimated value,'' said Ms. Smith, the command's spokeswoman. She said that was mainly ''because the various contingencies are beginning to unfold.''

KBR won this and most of its other Pentagon contracts in a competition with other contractors, but KBR is the sole source for the many tasks that fall under the umbrella contract.

Pentagon officials said the company had recently taken over a wide range of tasks at Khanabad Air Base in Uzbekistan, from running the dining operation to handling fuel and generating power for the airfield. The company employs Uzbeks, paying them in accordance with ''local laws and customs'' but operating under United States health and safety guidelines, according to Halliburton's statement.

For the first six months that American troops were at Khanabad, the logistical support was provided by the Army's First Corps Support Command. Mr. Cole, the contract manager for the joint command in Kuwait, said the contract would initially cost 10 to 20 percent more than if the Army had done the work itself. He said that he and his staff recommended using the contractor because ''they do a better job of maintaining the infrastructure.'' In addition, he said, the contractor should provide long-term flexibility, an asset in a war with many unknowns, and cost savings by avoiding Army troop transfers.

Ms. Smith said that the criticisms by the G.A.O. had led the Army to build additional controls into the contract.

At its base in Cuba, the Navy has followed the same pattern as the Army: use the military first and augment it with KBR. The Navy's construction brigade, the Seabees, built the first detention facility for battlefield detainees at Guantanamo Bay. Then the Navy activated a recently awarded $300 million, five-year logistic support contract with KBR to construct more permanent facilities, some 600 units, built mostly by workers from the Philippines and India, at a cost of $23 million.

John Peters, the Navy Facilities Engineering Command spokesman, said the permanent camp was ''bigger, more sophisticated than what Seabees do.'' But the Seabees built the facilities for the troops guarding the detainees, and in the 1990's the Seabees built two tent cities capable of housing 20,000 refugees in Guantanamo Bay.

''Seabees typically can perform the work at about half the cost of contractors, because labor costs are already sunk and paid for,'' said Daryl Smith, a Seabees spokesman.

Zelma Branch, a KBR spokeswoman, said the company relied on its excellent record rather than personal relationships to win its contracts. But hiring former military officers can help the company understand and anticipate the Pentagon's needs.

''The key to the company's success is good client relations and having somebody who could anticipate what the client's needs are going to be,'' Mr. Ayers, the former company executive, said.

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

Mr. Chairman, I took the time in opposition, but I am not going to oppose this amendment. Number one, it is my understanding with the chairman, pursuant to the colloquy, this amendment will not be affected as it now reads by the conference committee. Why? Because we want to make sure that the program does not go dark, I say tangentially, notwithstanding the fact that Mr. Walters says it is a program that has not worked, or recently has not worked, and he was, of course, an opponent of the program when it initially was adopted. That aside, let me say that one of the reasons I will not oppose it is because I believe the premise of the amendment is a premise that we all can share.

The distinguished gentleman from Maryland already mentioned this, but I think it bears mentioning again, not solely for political purposes, although obviously it is a high-visibility item, but also because this company is seeking to do business with the drug media

program. I mention Halliburton because it is a high-visibility company. Obviously the Vice President had some dealings with it. But it falls into the Ogilvy category. It is a company that has profited and continues to profit enormously from multiple contracts with the Department of Defense.

In February of this year, Halliburton subsidiary KBR reached a $2 million settlement, very similar to the Ogilvy settlement, with the government amid criminal allegations of fraud, false claims and false statements. KBR was subsequently, notwithstanding that, awarded a 10-year unlimited cost contract with the Army. There were no amendments to preclude that.

But the principle that the gentleman from Georgia puts before us is a very valid principle, and the principle is, if you want to do business with the government, play by the rules. We had an amendment on this floor that the gentleman from Virginia (Mr. MORAN) fought very strongly for that said if you want to abscond, if you want to dodge American taxes and dodge your responsibility and go overseas, to Bermuda or someplace else, then hey, we're not going to contract with you, we're not going to give you millions, tens of millions and hundreds of millions in contracts.

That is essentially the proposition that this amendment puts forward. I think it is a proposition frankly that the other body has sympathy with on both sides of the aisle. I do not think this is a partisan issue. I think the gentleman from Georgia is absolutely correct on that. Therefore, I have discussed this with the chairman, I think the chairman and I are in agreement, A, we are going to make sure that this program does not go dark. It may need to be made to operate more effectively and better so that it has the impact.

We have spent a lot of money on it although we have cut the money, as you know, that was originally asked for by the President by some $10 million, but this is an important program. But we want to make sure that this program is conducted in a fashion that all of us can have faith and trust and is not advantaging those who have undermined their responsibility to deal fairly with the government and deal fairly and legally with others.

In that context, Mr. Chairman, I will not object to this amendment, would hope that we could adopt it by a voice vote and then, working with the gentleman from Georgia and others, we will work in the conference to come to a conclusion that I think will stand for the proposition that this amendment stands for, and at the same time, protect the program that all of us feel is an important one.

Mr. BARR of Georgia. Mr. Chairman, the eloquence of the distinguished gentleman from Maryland cannot be added or subtracted to without doing it an injustice. I appreciate the words of the gentleman from Maryland in support of this amendment. I understand his concerns, which I share about making sure the program continues. We wish to strengthen it through this amendment and that is what I will work to do. I appreciate also the support of the distinguished gentleman from Oklahoma (Mr. ISTOOK) to whom I yield the balance of my time.

Mr. ISTOOK. How much time, may I inquire, remains, Mr. Chairman?

The CHAIRMAN pro tempore (Mr. LATOURETTE). The gentleman had 2½ minutes.

Mr. ISTOOK. Mr. Chairman, I appreciate the gentleman from Georgia's efforts to make sure that this contract that comes under the jurisdiction of our subcommittee for this national antidrug campaign is handled responsibly. The reason we have these questions is because there has been a GAO inquiry into the prior performance of this same contract by the Ogilvy firm and there has been a major fine assessed for improper charges and handling and abuses in their performance of that contract. That is why we have this language, to make sure that we can have it reviewed to make sure that that contract is handled properly.

However, Mr. Chairman, I do not believe that this was a proper occasion for people to try to bring up extraneous matters that have not been the subject of such investigation. We have not been here talking on the floor about, for example, Global Crossing and tens of millions of dollars—or was it hundreds of millions of dollars—obtained by insiders and obtained by Terry McAuliffe, the Democratic National Committee chairman; we have not been bringing up the allegations of abuses related to Enron and the possible involvement of Citibank chaired by the former Secretary of the Treasury Robert Rubin from the Clinton administration; and I do not think it was appropriate for people to try to bring this up as an opportunity to take shots at other people in the debate here.

We have plenty of time to focus on each misdeed as we learn of it and to make sure that we hold every person in America fully accountable under our laws. That is what we want to make sure that we do in this particular contract with the people that are involved in performing it. We do not need to go far afield as I heard some people do earlier and as I did myself only to point out that this is inappropriate. We are here talking about the drug contract. We are here talking about the firm that abused their position as a contractor with the taxpayers on this and to make sure that abuse does not happen but that correcting that abuse will not disrupt this important national drug effort.

□ 1330

The CHAIRMAN pro tempore (Mr. LATOURETTE). All time for debate has expired.

The question is on the amendment offered by the gentleman from Georgia (Mr. BARR).

The amendment was agreed to.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6, rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed, in the following order:

Amendment No. 21, offered by the gentleman from Virginia (Mr. MORAN), the amendment offered by the gentleman from Colorado (Mr. HEFLEY); amendment No. 16, offered by the gentleman from Colorado (Mr. HEFLEY); and amendment No. 7, offered by the gentleman from Vermont (Mr. SANDERS).

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

AMENDMENT NO. 21 OFFERED BY MR. MORAN OF VIRGINIA

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

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 261, noes 166, not voting 7, as follows:

[Roll No. 336]

AYES—261

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baker
Baldacci
Baldwin
Barcia
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Boehlert
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Chambliss
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
DeFazio
DeGette
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Fletcher
Forbes
Ford
Fossella
Frank
Frost
Ganske
Gekas
Gephardt
Gilman
Gonzalez
Gordon
Granger
Graves
Green (TX)
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hayes
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Hunter
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kleczka
Kucinich
LaFalce
LaHood
Lampson

Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Petri
Phelps
Platts
Pomeroy
Price (NC)
Quinn
Rahall
Rangel
Reyes
Riley
Rivers
Rodriguez
Roemer
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schakowsky
Schiff
Scott
Serrano
Sherman
Shimkus
Shows
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Sweeney
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Walsh
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Weldon (PA)
Weller
Wexler
Wolf
Woolsey
Wu
Wynn

NOES—166

Aderholt
Akin
Armey
Bachus
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cantor
Castle
Chabot
Coble
Collins
Combest
Cooksey
Crane
Crenshaw
Cubin
Culberson
Cunningham
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Everett
Flake
Foley
Frelinghuysen
Gallegly
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goss
Graham
Green (WI)
Greenwood
Hastings (WA)
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (IL)
Johnson, Sam
Keller
Kennedy (MN)
Kerns
Kirk
Knollenberg
Kolbe
Latham
Lewis (CA)
Linder
Lucas (OK)
Manzullo
McCrery
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Otter
Oxley
Paul
Pence
Peterson (PA)
Pickering
Pitts
Pombo
Portman
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shuster
Simmons
Simpson
Skeen
Smith (TX)
Souder
Stump
Sullivan
Sununu
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Young (AK)
Young (FL)

NOT VOTING—7

Bonior
Cannon
Cox
Delahunt
Stearns
Tancredo
Traficant

□ 1353

Messrs. COBLE, LEWIS of California, and COOKSEY changed their vote from ''aye'' to ''no.''

Messrs. CHAMBLISS, KINGSTON, LAHOOD, FORBES, OWENS, THOMPSON of Mississippi, JOHN, and STENHOLM changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. HEFLEY

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Colorado (Mr. HEFLEY) on which further proceedings were postponed and 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.

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 165, noes 265, not voting 4, as follows:

[Roll No. 337]

AYES—165

Akin
Armey
Bachus
Ballenger
Barcia
Barr
Barrett
Bartlett
Bass
Bereuter
Berry
Biggert
Bilirakis
Boozman
Boswell
Bryant
Burr
Burton
Buyer
Camp
Cannon
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Cramer
Crane
Cubin
Cunningham
Davis, Jo Ann
Deal
DeFazio
DeMint
Doggett
Doolittle
Duncan
Ehrlich
Evans
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Gallegly
Ganske
Gibbons
Gilman
Goode
Goodlatte
Gordon
Graham
Green (TX)
Green (WI)
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hoekstra
Hostettler
Hulshof
Hyde
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kind (WI)
Kingston
Kirk
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Luther
Manzullo
Matheson
McInnis
McIntyre
Mica
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Moore
Moran (KS)
Myrick
Nethercutt
Ney
Norwood
Osborne
Otter
Oxley
Paul
Pence
Petri
Phelps
Pickering
Pitts
Platts
Radanovich
Ramstad
Rehberg
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Sensenbrenner
Sessions
Shadegg
Shimkus
Shows
Shuster
Simmons
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Stenholm
Stump
Sullivan
Sununu
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Vitter
Walden
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)

NOES—265

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Baca
Baird
Baker
Baldacci
Baldwin
Barton
Becerra
Bentsen
Berkley
Berman
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Borski
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Callahan
Calvert
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clyburn
Condit
Conyers
Costello
Cox
Coyne
Crenshaw
Crowley
Culberson
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Tom
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart
Dicks
Dingell
Dooley
Doyle
Dreier
Dunn
Edwards
Ehlers
Emerson
Engel
English
Eshoo
Etheridge
Farr
Fattah
Filner
Ford
Fossella
Frank
Frelinghuysen
Frost
Gekas
Gephardt
Gilchrest
Gillmor
Gonzalez
Goss
Granger
Graves
Greenwood
Grucci
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Holden
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Hunter
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kerns
Kildee
Kilpatrick
King (NY)
Kleczka
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (OK)
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Mink
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Northup
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Peterson (PA)
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Rahall
Rangel
Regula
Reyes
Reynolds
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Schrock
Scott
Serrano
Shaw
Shays
Sherman
Sherwood
Simpson
Skeen
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Sweeney
Tauscher
Tauzin
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Walsh
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Waxman

Weiner
Wexler
Wilson (NM)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—4

Bonior
Stearns
Tancredo
Traficant

□ 1402

Mrs. BIGGERT changed her vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 16 OFFERED BY MR. HEFLEY

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Colorado (Mr. HEFLEY) on which further proceedings were postponed and 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.

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 147, noes 282, not voting 5, as follows:

[Roll No. 338]

AYES—147

Akin
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bereuter
Berry
Bilirakis
Blunt
Boswell
Brady (TX)
Bryant
Burr
Burton
Buyer
Cannon
Cantor
Castle
Chabot
Chambliss
Clement
Coble
Collins
Cooksey
Costello
Cox
Crane
Cubin
Culberson
Cunningham
Davis, Jo Ann
Deal
DeMint
Diaz-Balart
Doggett
Duncan
Ehrlich
English
Everett
Flake
Foley
Forbes
Fossella
Gallegly
Gibbons
Goode
Goodlatte
Graham
Graves
Gutknecht
Hall (TX)
Hansen
Harman
Hart
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hoekstra
Hostettler
Hyde
Issa
Jenkins
Johnson, Sam
Jones (NC)
Keller
Kennedy (MN)
Kerns
Kirk
Linder
Lucas (KY)
Luther
Manzullo
Matheson
McInnis
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Norwood
Nussle
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Ramstad
Rehberg
Reynolds
Riley
Roemer
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shays
Shimkus
Shows
Simmons
Smith (MI)
Smith (TX)
Smith (WA)
Stenholm
Stump
Sullivan
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thornberry
Tiahrt
Tiberi
Toomey
Turner
Upton
Vitter
Walden
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)

NOES—282

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Bass
Becerra
Bentsen
Berkley
Berman
Biggert
Bishop
Blagojevich
Blumenauer
Boehlert
Boehner
Bonilla
Bono
Boozman
Borski
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Brown (SC)
Callahan
Calvert
Camp
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clyburn
Combest
Condit
Conyers
Coyne
Cramer
Crenshaw
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Dicks
Dingell
Dooley
Doolittle
Doyle
Dreier
Dunn
Edwards
Ehlers
Emerson
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Fletcher
Ford
Frank
Frelinghuysen
Frost
Ganske
Gekas
Gephardt
Gilchrest
Gillmor
Gilman
Gonzalez
Gordon
Goss
Granger
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Hall (OH)
Hastings (FL)
Hastings (WA)
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Holden
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Hulshof
Hunter
Inslee
Isakson
Israel
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kleczka
Knollenberg
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (OK)
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Rangel
Regula
Reyes
Rivers
Rodriguez
Rogers (KY)
Rogers (MI)
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schakowsky
Schiff
Scott
Serrano
Shaw
Sherman
Sherwood
Shuster
Simpson
Skeen
Skelton
Smith (NJ)
Snyder
Solis
Souder
Spratt
Stark
Strickland
Stupak
Sununu
Sweeney
Tauscher
Thomas
Thompson (CA)
Thompson (MS)
Thune
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Walsh
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Wilson (NM)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—5

Bonior
Slaughter
Stearns
Tancredo
Traficant

□ 1411

Mrs. CLAYTON changed her vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Ms. SLAUGHTER. Mr. Speaker, I missed rollcall No. 338, Hefley amendment #16.

Had I been present, I would have voted "no".

AMENDMENT NO. 7 OFFERED BY MR. SANDERS

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Vermont (Mr. SANDERS) on which further proceedings were postponed and 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.

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 308, noes 121, not voting 5, as follows:

[Roll No. 339]

AYES—308

Abercrombie
Ackerman
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Barcia
Barrett
Bartlett
Bass
Becerra
Bentsen
Berkley
Berman
Berry
Bilirakis
Bishop
Blagojevich
Blumenauer
Boehlert
Borski
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Clay
Clayton
Clement
Clyburn
Coble
Condit
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crowley
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Ehrlich
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Ganske
Gekas
Gephardt
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Green (TX)
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hastings (FL)
Hayes
Hefley
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hoyer
Hunter
Inslee
Isakson
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kelly
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kleczka
Kucinich
LaFalce
LaHood
Lampson
Langevin

Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McInnis
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Ney
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Platts
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Rangel
Regula
Reyes
Reynolds
Rivers
Rodriguez
Roemer
Rogers (KY)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Serrano
Shadegg
Shaw
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Strickland
Stupak
Sullivan
Sununu
Sweeney
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thompson (MS)
Thune
Thurman
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Walden
Walsh
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Weldon (PA)
Wexler
Whitfield
Wilson (NM)
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOES—121

Aderholt
Akin
Armey
Ballenger
Barr
Barton
Bereuter
Biggert
Blunt
Boehner
Bonilla
Bono
Boozman
Boswell
Brady (TX)
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Chabot
Chambliss
Collins
Combest
Crane
Crenshaw
Cubin
Culberson
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Flake
Gallegly
Gibbons
Granger
Graves
Green (WI)
Greenwood
Hart
Hastings (WA)
Hayworth
Herger
Hostettler
Houghton
Hulshof
Hyde
Issa
Istook
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kennedy (MN)
Kerns
Kirk
Kolbe
Linder
Lucas (KY)
Lucas (OK)
McCrery
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Myrick
Nethercutt
Northup
Norwood
Osborne
Otter
Oxley
Paul
Pence
Pitts
Pombo
Pomeroy
Portman
Putnam
Ramstad
Rehberg
Riley
Rogers (MI)
Ryan (WI)
Sensenbrenner
Sessions
Shays
Simpson
Skeen
Smith (TX)
Stenholm
Stump
Tauzin
Thomas
Thornberry
Tiahrt
Tiberi
Vitter
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weller
Wicker
Wilson (SC)
Wolf

NOT VOTING—5

Bonior
Knollenberg
Stearns
Tancredo
Traficant

□ 1420

Mr. MORAN of Kansas changed his vote from ''aye'' to ''no.''

Mrs. JO ANN DAVIS of Virginia and Mr. FORBES changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 8 OFFERED BY MR. WYNN

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. WYNN:

At the end of the bill (before the short title), insert the following new section:

SEC. ____. (a) CENTRALIZED REPORTING SYSTEM.—Not later than 180 days after the date of the enactment of this Act, each agency shall establish a centralized reporting system in accordance with guidance promulgated by the Office of Management and Budget that allows the agency to generate periodic reports on the contracting efforts of the agency. Such centralized reporting system shall be designed to enable the agency to generate reports on efforts regarding both contracting out and contracting in.

(b) REPORTS ON CONTRACTING EFFORTS.—(1) Not later than 180 days after the date of the enactment of this Act, every agency shall generate and submit to the Director of the Office of Management and Budget a report on the contracting efforts of the agency undertaken during the 2 fiscal years immediately preceding the fiscal year during which this Act is enacted. Such report shall comply with the requirements in paragraph (3).

(2) For the current fiscal year and every fiscal year thereafter, every agency shall complete and submit to the Director of the Office of Management and Budget a report on the contracting efforts undertaken by the agency during the current fiscal year. Such reports shall comply with the requirements in paragraph (3), and shall be completed and submitted not later than the end of the first fiscal quarter of the subsequent fiscal year.

(3) The reports referred to in this subsection shall include the following information with regard to each contracting effort undertaken by the agency:

(A) The contract number and the Federal supply class or service code.

(B) A statement of why the contracting effort was undertaken and an explanation of what alternatives to the contracting effort were considered and why such alternatives were ultimately rejected.

(C) The names, addresses, and telephone numbers of the officials who supervised the contracting effort.

(D) The competitive process used or the statutory or regulatory authority relied on to enter into the contract without public-private competition.

(E) The cost of Federal employee performance at the time the work was contracted out (if the work had previously been performed by Federal employees).

(F) The cost of Federal employee performance under a Most Efficient Organization plan (if the work was contracted out through OMB Circular A–76).

(G) The anticipated cost of contractor performance, based on the award.

(H) The current cost of contractor performance.

(I) The actual savings, expressed both as a dollar amount and as a percentage of the cost of performance by Federal employees, based on the current cost, and an explanation of the difference, if any.

(J) A description of the quality control process used by the agency in connection with monitoring the contracting effort, identification of the applicable quality control standards, the frequency of the preparation of quality control reports, and an assessment of whether the contractor met, exceeded, or failed to achieve the quality control standards.

(K) The number of employees performing the contracting effort under the contract and any related subcontracts.

(c) REPORT ON CONTRACTING EFFORTS.—(1) For the current fiscal year and every fiscal year thereafter, every agency shall complete and submit to the Director of the Office of Management and Budget a report on the contracting efforts undertaken by the agency during the current fiscal year. Such reports shall comply with the requirements in paragraph (2), and shall be completed and submitted not later than the end of the first fiscal quarter of the subsequent fiscal year.

(2) The reports referred to in paragraph (1) shall include the following information for each contracting in effort undertaken by the agency:

(A) A description of the type of work involved.

(B) A statement of why the contracting in effort was undertaken.

(C) The names, addresses, and telephone numbers of the officials who supervised the contracting in effort.

(D) The cost of performance at the time the work was contracted in.

(E) The current cost of performance by Federal employees or military personnel.

(d) REPORT ON EMPLOYEE POSITIONS.—Not later than 30 days after the end of the current fiscal year and every fiscal year thereafter, every agency shall report on the number of Federal employee positions and positions held by non-Federal employees under a contract between the agency and an individual or entity that has been subject to public-private competition.

(e) COMMITTEES TO WHICH REPORTS MUST BE SUBMITTED.—The reports referred to in this section shall be submitted to the Committee on Government Reform of the House of Representatives and to the Committee on Governmental Affairs of the Senate.

(f) PUBLICATION.—The Director of the Office of Management and Budget shall promptly publish in the Federal Register notices including a description of when the reports referred to in this section are available to the public and the names, addresses, and telephone numbers of the officials from whom the reports may be obtained.

(g) AVAILABILITY ON INTERNET.—After the excision of proprietary information, the reports referred to in this section shall be made available through the Internet.

(h) REVIEW.—The Director of the Office of Management and Budget shall review the reports referred to in this section and consult with the head of the agency regarding the content of such reports.

(i) DEFINITIONS..—As used in this section:

(1) The term ''employee'' means any individual employed—

(A) as a civilian in a military department (as defined in section 102 of title 5, United States Code);

(B) in an executive agency (as defined in section 105 of title 5, United States Code), including an employee who is paid from non-appropriated funds;

(C) in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service;

(D) in the Library of Congress;

(E) in the Government Printing Office; or

(F) by the Governors of the Federal Reserve System.

(2) The term ''agency'' means any department, agency, bureau, commission, activity, or organization of the United States, that employs an employee (as defined in paragraph (1)).

(3) The term ''non-Federal personnel'' means employed individuals who are not employees, as defined in paragraph (1).

(4) The term ''contractor'' means an individual or entity that performs a function for an agency under a contract with non-Federal personnel.

(5) The term ''privatization'' means the end result of the decision of an agency to exit a business line, terminate an activity, or sell Government owned assets or operational capabilities to the non-Federal sector.

(6) The term ''outsourcing'' means the end result of the decision of an agency to acquire services from external sources, either from a non-Federal source or through interservice support agreements, through a contract.

(7) The term ''contracting out'' means the conversion by an agency of the performance of a function to the performance by a non-Federal employee under a contract between an agency and an individual or other entity.

(8) The term ''contracting in'' is the conversion of the performance of a function by non-Federal employees under a contract between an agency and an individual or other entity to the performance by employees.

(9) The term ''contracting'' means the performance of a function by non-Federal employees under a contract between an agency and an individual or other entity. The term ''contracting'', as used throughout this Act, includes privatization, outsourcing, contracting out, and contracting, unless otherwise specifically provided.

(10)(A) Subject to subparagraph (B), the term ''critical for the provision of patient care'' means direct patient medical and hospital care that the Department of Veterans Affairs or other Federal hospitals or clinics are not capable of furnishing because of geographical inaccessibility, medical emergency, or the particularly unique type of care or service required.

(B) The term does not include support and administrative services for hospital and clinic operations, including food service, laundry services, grounds maintenance, transportation services, office operations, and supply processing and distribution services.

(j) APPROPRIATION.—There is appropriated $2,000,000 for fiscal year 2003 to carry out this section, to be derived by transfer from the amount appropriated in title I of this Act for ''Internal Revenue Service—Tax Law Enforcement''. The Director of the Office of Management and Budget shall allocate such amount among the appropriate accounts, and shall submit to the Congress a report setting forth such allocation.

(k) APPLICABILITY.—(1) The provisions of this section shall apply to fiscal year 2003 and each fiscal year thereafter.

(2) This section—

(A) does not apply with respect to the General Accounting Office;

(B) does not apply with respect to depot-level maintenance and repair of the Department of Defense (as defined in section 2460 of title 10, United States Code); and

(C) does not apply with respect to contracts for the construction of new structures or the remodeling of or additions to existing structures, but shall apply to all contracts for the repair and maintenance of any structures.

The CHAIRMAN. Pursuant to the order of the House of Tuesday, July 23, 2002, the gentleman from Maryland (Mr. WYNN) and a Member opposed each will control 2½ minutes.

Mr. ISTOOK. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The Chair recognizes the gentleman from Maryland (Mr. WYNN).

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

I do intend to withdraw this amendment, but I want to bring to the attention of the House, and more importantly, the American people a very important issue, and that is, contracting out and whether the American taxpayer is receiving best value. Some people have characterized this issue as private contractors versus Federal employees. It is not. The issue before us today is whether the American taxpayer is getting best value for the services we contract out.

The essence of this amendment is to ensure that there is transparency and scrutiny of government contractors to determine whether the American public is receiving best value, both quantitatively and qualitatively, by establishing a centralized reporting by each agency of its contracting efforts.

In recent years, the notion that outsourcing is the most cost-efficient approach to providing government services has gained considerable momentum. However, when we asked the Government Accounting Office to tell us how many contracts were being let by the Federal Government, who was involved and how much the savings were, they could not tell us, and they said they could not tell us because there was no centralized accounting so that they could identify how much each agency was doing.

In the absence of accountability and congressional oversight, indiscriminate outsourcing and privatization of government services will grow with no guarantee of actual cost savings.

My amendment is very simple. It will require that each agency establish a centralized reporting system on its contracting practices. The reports submitted to the director of the Office of Management and Budget would include the contract number and the Federal supply class of service code; a statement of why the contracting effort was undertaken; the name of the supervisors and officials involved; the cost of Federal employee performance at the time the work was contracted out, if the work had been previously performed by Federal employees.

It would also report the anticipated cost of contractor performance and the cost of, the anticipated cost and the actual cost of contract performance, and most importantly, the reports would include the actual savings, if any, compared with performance by Federal employees. The number of contract employees would also be listed.

This oversight responsibility would be accomplished by submitting these reports to the Committee on Government Reform in the House and the Committee on Government Affairs in the Senate.

The director of the Office of Management and Budget would publish in the Federal Register notices of when the reports would be available to the public so that the public could determine if they are getting best value.

Currently, agencies do not closely monitor the cost efficiency of the billions of dollars in contracting out and privatization. There is no oversight of contracts after they have been awarded to compare past costs with current costs or to consider the potential effects of cost overruns.

If outsourcing and privatization are to work, it must be transparent. It must be truthful. All the parties must be disclosed, identified and held responsible and accountable for their actions.

My amendment very simply would add basic safeguards such as reporting and oversight, two that are currently missing from the process. I believe this is a good amendment and an important issue for this Congress.

Mr. WYNN. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from Maryland?

There was no objection.

AMENDMENT OFFERED BY MR. HOYER

Mr. HOYER. 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. HOYER:

In the appropriate place at the end of the bill (before the short title), include the following:

SEC. . None of the funds provided to the Customs Service under this Act shall be used to require reports on repairs to U.S. flag vessels on the high seas.

Mr. CRANE. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN pro tempore. Pursuant to the order of the House Tuesday, July 23, 2002, the gentleman from Maryland (Mr. HOYER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Maryland (Mr. HOYER).

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

I thank the distinguished gentleman from Illinois (Mr. CRANE) for reserving and giving me the opportunity to explain this amendment.

Mr. Chairman, this amendment frankly was brought to me just within the last 48 hours. It does, however, seem to raise an issue of significant importance and difficulty for a number of those in the shipping business.

The problem apparently is that if a person has a ship repaired while on the high seas, that is not within the territorial waters of any nation, and those repairs are effected using non-U.S.

parts, then they must fill out very substantial paperwork, and very substantial reporting requirements are implicated in that instance, so that we are causing a great burden to shipping companies that are U.S.-flagged. Obviously, we want shipping to be U.S.-flagged. We know that that is a difficulty.

I have introduced this amendment to try to address that issue. Because I introduced the amendment as a ''none of the funds'' and it is, therefore, a very blunt instrument, I agree with the gentleman from Illinois (Mr. CRANE) that this amendment should not pass in its present form. Even if it were added to the bill, I would be in favor of dropping it in conference. Its purpose was solely to protect our ability to address this issue.

It is, however, my understanding from the gentleman from Illinois (Mr. CRANE) and his staff that they share the view that this is a problem and that they are going to look at that and look at it closely. I do want to thank the gentleman from Illinois (Mr. CRANE) for his attention to this matter and for his staff working with us to see if we can come to a resolution of this matter.

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

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

Mr. CRANE. Mr. Chairman, I thank the gentleman for yielding and want to reassure him that his concerns are valid, legitimate concerns, and that we on the committee will look into this issue because it is something that needs to be resolved.

Mr. HOYER. Mr. Chairman, I thank the gentleman for his comments.

Mr. HOYER. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The CHAIRMAN pro tempore. Are there further amendments?

If not, the Clerk will read the last two lines.

The Clerk read as follows:

This Act may be cited as the ''Treasury and General Government Appropriations Act, 2003''.

Mr. BLUMENAUER. Mr. Chairman, today I voted for the fiscal year 2003 Appropriations Bill for Treasury, Postal Service, and General Government. This bill contains key provisions that I have supported in Congress.

The appropriations bill before us contains a measure that prohibits the use of funds in the bill to finalize, implement, administer or enforce the proposed Treasury Department rule declaring that real estate brokerage is ''an activity that is financial in nature or incidental to a financial activity.'' I agree with this prohibition and am a cosponsor of H.R. 3424, which would accomplish the same objective. The banking industry provides an invaluable function in our economy and the integrity of its operations and security of deposits is critical. The Gramm-Leach-Bliley Act is speeding ongoing changes in the United States financial services industry and allows banks flexibility in responding to economic trends. However, I do not believe the benefits of allowing banks to engage in real estate brokerage and property management activities outweigh the risks.

Regarding the Postal Service, the bill specifically requires that six-day delivery of mail be continued. It also requires that mail for overseas voting and for the blind continue to be free. I have always believed post offices play an integral role in the livability of our communities. They serve as business, social and often historical centers in our neighborhoods. It's for these reasons that I am a sponsor of legislation, H.R. 1861, which requires the Postal Service to engage local officials and the public it serves when opening, closing, relocating, or renovating facilities. I hope we continue to work to ensure the Postal Service is a good partner with our communities and follows local laws and regulations.

I am pleased that the final bill, for the second year in a row, ends the travel ban to Cuba and allows for private financing of agricultural sales to Cuba by U.S. farmers. In addition, the House approved an amendment to allow Cuban-Americans to send money to their relatives in Cuba without restrictions. Food and medicine should not be used as weapons. The Cuban people should not have to suffer because the United States does not agree with the Cuban government. These provisions show that there is growing momentum in favor of getting rid of the embargo against Cuba altogether. Only through engagement will we be able to effectively promote the ideals of human rights and democracy.

The CHAIRMAN pro tempore. There being no further amendments, under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SHIMKUS) having assumed the chair, Mr. LATOURETTE, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5120) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 2003, and for other purposes, pursuant to House Resolution 488, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

□ 1430

The SPEAKER pro tempore (Mr. SHIMKUS). The question is on passage of the bill.

Under clause 10 of rule XX, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4775) ''An Act making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes.''.

PROVIDING FOR CONSIDERATION OF H.R. 4965, PARTIAL-BIRTH ABORTION BAN ACT OF 2002

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 498 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 498

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 4965) to prohibit the procedure commonly known as partial-birth abortion. The bill shall be considered as read for amendment. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) two hours of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; and (2) one motion to recommit.

The SPEAKER pro tempore. The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purposes of debate only.

Mr. Speaker, on Tuesday the Committee on Rules met and granted a closed rule for the Partial-Birth Abortion Ban of 2002. H.R. 4965 would ban performance of a partial-birth abortion except if it were necessary to save the mother's life. As an original cosponsor of this legislation, I am pleased to see the legislation reach the floor of the House. I also believe that President Bush deserves the opportunity to put an end to this horrific act of human violence by signing this legislation into law.

I must tell my colleagues, as a mother and a grandmother, it is still astonishing to me today that this is even remotely legal in America, but it is, and as we will no doubt hear on the floor today, it is practiced all too often in this country. The vast majority of partial-birth abortions are performed on

healthy babies and healthy mothers. Although language banning this procedure has been struck down in the past by the Supreme Court, this new legislation has been tailored to address the Court's concerns. The five-Justice majority in Stenberg vs. Carhart thought that Nebraska's definition of partial-birth abortion was vague and could be construed to cover not only abortions in which the baby is mostly delivered alive before being killed but also the more common dilation and evacuation, D&E, method.

H.R. 4965 defines partial-birth abortion as an abortion in which the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of a breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus.

The tighter definition not only clarifies the procedure so that the Court will not reject it, it also draws attention to the violence of partial-birth abortion by describing how far out the baby can be.

I am pleased that we are bringing the Partial-Birth Abortion Ban Act of 2002 to the floor again. We have changed the bill, adding findings of fact to overcome constitutional barriers, and I am confident that it will survive judicial review.

The American people, Mr. Speaker, want this bill in overwhelming numbers, believing in their hearts that we are better than this. We are a better people. To that end, I urge my colleagues to support the rule and the underlying bill.

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

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume, and I thank the gentlewoman from North Carolina for yielding me the customary 30 minutes.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, we are about to begin our annual debate on a procedure that is not really recognized by the medical profession, which is totally unconstitutional, and would not go anywhere. The Supreme Court just recently said again that all the laws that they have had brought before them, and particularly the one on Nebraska, were unconstitutional. Given that, it is very tempting for us on our side to talk about the things that American people are concerned about. Their pensions, their jobs, corporate responsibility, accounting measures, the regulation that we can try to do to make things better for us, creation of jobs, education, health care, prescription drugs. But, no, we are going to spend 3 hours on this issue right here which will not be taken up by the Senate and which is unconstitutional and, frankly, we should not be messing with it. It really is a hoax on the public and I am sorry to be a part of it.

But, Mr. Speaker, I certainly oppose the closed rule. They have shut out all meaningful debate on this. Anybody who had a right to talk about this on the other side was totally ignored, given no opportunity. No amendment will be allowed. You heard me correctly; no amendment to protect the lives of women will be allowed. For a bill that impacts so fundamentally the life of women, this is unconscionable and wholly unsurprising, given the contempt shown in this House for measures that impact our sisters and our daughters.

We have been given 2 hours of general debate on this issue, and I would not be at all surprised if that is more time, given the nature of the rule, than we give to the national security issue this afternoon on homeland security.

Mr. Speaker, election season is upon us. In the face of a crumbling stock market, an exploding deficit, and uncertain war on terrorism at home and around the globe, of this we can be sure: Congress will use the floor of the House of Representatives to push propaganda restricting a woman's right to choose. Direct mail pieces distorting this issue will hit the streets as soon as the vote is completed, just in time for the August recess. This vote before us is pure politics. The measure is cynical, it is unconstitutional, and it demeans this institution and those who serve in it.

On its face, H.R. 4965 suffers from the same two flaws that led the Supreme Court to declare a similar Nebraska law unconstitutional: It fails to include an exception to protect maternal health, and it places an undue burden on a woman's right to obtain an abortion prior to viability by banning the most common second trimester abortion procedure.

Fifteen pages of congressional findings do nothing to remedy this unconstitutionally flawed bill. In fact, the case law is clear. The Supreme Court articulated the three principles that govern abortion laws: One, a woman has the right to choose to terminate her pregnancy prior to viability. That is the law of the land. Two, the State cannot impose an undue burden on the woman's right to terminate a pregnancy. And, third, after viability, a State may regulate abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

How strange it is that we do not really care about the life or the health of the mother. The measure before us today does not include an exception to protect the health of the woman, and certainly poses an undue burden on her.

Moreover, and very importantly, this bill will turn doctors into criminals and put them in jail for performing a safe medical procedure which, in their best judgment, is the best way to protect a woman's right to having further children. The civil sanctions and criminal remedies, along with previous references by legislative proponents to medical professionals as assassins, exterminators, and murderers are part of a design to intimidate medical professionals from performing abortions generally.

In the context of abortion clinic demonstrations and bombings, it is clear that many in the movement have an agenda of banning all abortions. The measure before us today is clearly a part of this ongoing effort. Criminal sanctions for doctors would chill any medical professional from performing many of the most common procedures. Given the vague and the overbroad language of the bill, doctors can reasonably fear prosecution for using the safest and most common abortion methods, and they probably will not perform them. Who could blame them?

I assure my colleagues that the primary concern of most physicians will not be protecting the health of the woman, but protecting their own professional life. For this reason, the American Medical Association does not support this bill. Indeed, they are not the only ones. The American Public Health Association, the American Nurses Association, the American Medical Women's Association, Physicians for Reproductive Choice and Health, the American College of Nurse Practitioners, the American Medical School Student Association, the Association of Reproductive Health Professionals, Association of Schools of Public Health, Associations of Women Psychiatrists, National Asian Women's Health Organization, National Association of Nurse Practitioners and Reproductive Health, The National Black Women's Health Project, and the National Latina Institute for Reproductive Health.

But the bill does not stop here. Not content to cause the woman great harm or put the doctor in jail, in one of its most egregious provisions, it allows the woman to be sued by her husband or parents if she receives this procedure. In essence, proponents of this measure want to give a husband the veto power over a woman's decision. The Supreme Court has expressly held this to be unconstitutional.

Think about it for a moment. Are we really prepared to allow an abusive husband, or a husband who has abandoned his wife, to threaten his wife with a lawsuit if she obtained a procedure to protect her health and future fertility? Who do we think we are? The last time you were facing a life-or-death decision, do you want Congress with you in the emergency rooms? If, God forbid, you should find yourself in this terrible position, are you not going to allow the doctors to make a decision until your Member of Congress arrives because he or she will be the last word? Sitting down with your family, do you need Congress there to do it?

Congress does not have the right or the expertise to make these decisions for the American people; and, indeed, in the history of the Congress of the United States, no medical procedure has ever been outlawed. We are literally practicing medicine without a license.

It is unconscionable for this Congress to continually place its political agenda ahead of a woman's ability to have access to safe and appropriate medical care. Just like any other patient, a woman deserves to receive the best care based on the circumstances of her particular situation. As a Member of Congress, a mother of three daughters, and a long-time advocate of women's health, I strongly believe that the health of American women matters, and I urge my colleagues to vote ''no'' on this rule and no on the underlying bill.

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

Mrs. MYRICK. Mr. Speaker, I am pleased to yield 4 minutes to the gentlewoman from Florida (Ms. ROS-LEHTINEN).

Ms. ROS-LEHTINEN. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, during the Stenberg v. Carhart case, Supreme Court Justice Clarence Thomas accurately described the partial-birth abortion method when he said the following, and I apologize for the graphic nature of the quote, but this is the reality of what a partial-birth abortion act is. He says: ''After dilating the cervix, the doctor will grab the fetus by its feet and pull the fetal body out of its uterus into the vaginal cavity. At this stage of development, the head is the largest part of the body. The head will be held inside the uterus by the cervix. While the fetus is stuck in this position, dangling partly out of the woman's body and just a few inches from a completed birth, the doctor uses an instrument, such as a pair of scissors, to tear or perforate the skull. The doctor will then either crush the skull or will use a vacuum to remove the brain and other intracranial contents from the fetal skull, collapse the fetus's head, and pull the fetus from the uterus.''

□ 1445

Mr. Speaker, this terrible act, known as partial-birth abortion, is what we are urging our colleagues to ban today.

As noted in H.R. 4965, congressional findings further signal that partial-birth abortion is not medically indicated to preserve the health of the mother; and it is in fact unrecognized as a valid abortion procedure by the mainstream medical community.

To quote the American Medical Association: ''The partial delivery of a living fetus for the purpose of killing it outside the womb is ethically offensive to most Americans and physicians.''

Furthermore, the AMA could not find any identified circumstance in which the procedure was the only safe and effective abortion method.

Mr. Speaker, contrary to what the deceptive, pro-abortion lobby would like us to believe, partial-birth abortions involve killing almost fully delivered babies from the later stages of pregnancy, and not only in cases of fetal disorders or maternal distress. Contrary to the lies of the pro-abortion campaign, this is not a rare act that is only performed in extraordinary circumstances. In fact, most are performed for strictly elective reasons, and I quote abortionist Martin Haskell, who reported to the American Medical News, ''most of my abortions are elective in that 20–24 week range. In my particular case, probably 20 percent are performed for genetic reasons, and the other 80 percent are purely elective.''

But the worst tragedy of all is that partial-birth abortions are currently legal. This legislative body has twice approved to ban this atrocious act, only to have it vetoed twice by former President Bill Clinton. Today we have another historic opportunity to help stop this abhorrent act of killing the innocent unborn. I urge Members to take action and vote in favor of H.R. 4965.

Ms. SLAUGHTER. Mr. Speaker, I yield 6 minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, today on this serious and most sensitive issue, the Republican leadership has turned the people's House into nothing more than a poser's House, posing for holy pictures, as the gentleman from Wisconsin (Mr. OBEY) would have us say. The world's greatest deliberative body will not engage in democratic debate today. It will engage in a contrived, cynical charade.

In 1994 after the GOP majority captured the House, Gerald Solomon, the former Republican chairman of the Committee on Rules stated, ''The guiding principles will be openness and fairness.'' He was referring to the guiding principles of the Committee on Rules. He went on to say, ''The Rules Committee will no longer rig the procedure to contrive a predetermined outcome.'' ''From now on,'' Mr. Solomon went on, ''the Rules Committee will clear the stage for debate, and let the House work its will.''

I do not know how genuine was Mr. Solomon's conviction when he made those comments, but I presume that they were sincere. But the practice has been the opposite. Today's debate will not be open. It will not be fair. And it will not be a serious attempt to legislate. The rule ensures a rigged procedure to contrive a predetermined outcome, the very process the Republican Party derided when it regained the majority.

If the Republican leadership was really committed to fair and open debate, it would permit the Members to vote on the bipartisan Late Term Abortion Restriction Act which I and the gentleman from Pennsylvania (Mr. GREENWOOD), my Republican colleague, introduced last year and a number of years previous to that.

But the Committee on Rules has denied us that opportunity four times since 1995. Let Members be clear, the Partial-Birth Abortion Ban Act will not prevent a single abortion. Let me repeat that. The bill before us and on this floor reported out of the Committee on the Judiciary will not prevent a single abortion. Not one.

And the gentlewoman from Florida (Ms. ROS-LEHTINEN), who just spoke, testified to that fact when she said this procedure was not necessary and medical experts have said there are other methods to terminate the pregnancy. In other words, the issue here in this bill that is proposed by the Republican majority is not about preventing abortion, it is about a procedure.

I have asked those who are for this bill if this procedure were worse than others that are used to terminate a pregnancy. Is there anyone here who doubts the answer to that question is a clear and resounding ''no.''

The bill that the gentleman from Pennsylvania (Mr. GREENWOOD) and I introduced and which we asked to have made in order would have precluded all post-viability abortions because I believe the majority of us in this House believe that postviability abortion ought not to be by choice, but we do what the Supreme Court mandates we do and in my opinion is appropriate to do, and that is to provide for an exception so that the life of the mother might be saved if in the medical judgment such a procedure is necessary to accomplish that objective.

Furthermore, as the Supreme Court requires, and in my opinion is appropriate, it provides that if the mother's health will be put at risk, the medical procedure can be affected, but only in those instances. Otherwise late-term abortion, postviability abortion, would be precluded. The partial-birth abortion bill is sometimes I think by a sloppy press referred to as a late-term abortion. It has nothing to do with late term because the process can be used at any point in the pregnancy.

In fact, this bill would ban a rare medical procedure reserved for the most tragic of circumstances. In contrast, our bill will preclude all late-term abortions. Members may ask why is this not made in order? Why are they afraid to have us debate it? They can oppose it and say they do not agree with the exceptions. They can say the Supreme Court is wrong. But why preclude the opportunity in the people's House to adopt an amendment which reflects the law in 43 States of the United States of America?

Mr. Speaker, I will vote against this rule. What a shame that the majority fears open debate on this issue.

Mrs. MYRICK. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. LINDER).

Mr. LINDER. Mr. Speaker, I rise in support of both this rule and the underlying legislation, H.R. 4965, the Partial-

Birth Abortion Ban Act of 2002. This rule will allow adequate time for debate on this measure in addition to a motion to recommit with or without instructions, which will allow the House to work its will on this bill.

Today I will spare the House the horrible details of partial-birth abortion, for I am certain that many of my colleagues are all too familiar with the gruesome reality of this deadly procedure. I am also well aware of the Supreme Court's decision in Stenberg v. Carhart and the attempts by opponents of this bill to use that 5–4 decision as a safety net for their pro-abortion agenda.

Opponents of this measure will tell us that H.R. 4965 is unconstitutional because of the Supreme Court's Carhart decision. They will tell us we have no right to legislate a ban on this horrible practice because the Supreme Court says we cannot. I find that argument ironic, considering 413 Members of this body voted to pass a child pornography bill last month after the Supreme Court told us in Ashcroft v. Free Speech Coalition that we could not. Although I certainly respect the Supreme Court exercising its article III duties, I believe the Congress has its own duty to create and pass laws that protect the people of this country.

Before today, the House of Representatives had passed a ban on this procedure by veto-proof majorities in the last three Congresses. Why? Because an overwhelming bipartisan majority of this body, Members who represent the collective voice of the people of this country, believe that the line differentiating this practice and homicide is gray at best. How can any Member of the House turn to their constituents and tell them yes, I support a practice where the legal definition of murder and abortion are separated by mere inches? I, for one, cannot.

As such, I support both this rule and the underlying measure. It is time we put an end to this procedure which has been historically opposed not only by an overwhelming majority of this body but by an overwhelming majority of the citizens of this country. We will not relent on this issue. We will continue to fight for a ban on partial-birth abortions, and I ask that Members join with us in prohibiting this abhorrent practice.

In closing, let me say that when a Nation puts people in jail and fines them for destroying the potential life of an unborn loggerhead turtle or bald eagle, and then pays people for destroying the potential life of unborn babies, that Nation has lost its way.

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

Mr. Speaker, I would say to the gentleman who just spoke, the Hoyer amendment was not eligible for a motion to recommit because it is out of scope and would require a waiver.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, this House has had many fine moments where it has stood up to correct the wrongs of this Nation. For me personally, I remember the Civil Rights Act of 1964, as well as the Voter Rights Act of 1965, a life-changing experience for the community from which I come.

Today this House steps away from that fine hour. Not because I do not agree with the underlying principles that we have a responsibility to appreciate and honor life, but I believe that when we engage in frivolous legislation, we have a very large explanation to make.

The Stenberg case made a simple principle regarding this procedure, that a medical doctor can make a judgment in order to provide for the health of the mother. This has not been defined as an abortion. It has been defined as helping to save the life or the health of a mother. Over and over again we have said that decisions should be made between that mother's God, family, and physician. Yet this body now brings before us legislation that is denied an amendment that I offered, and many other Members offered, that would at least allow us to put into the bill that a procedure could be done, a medical judgment could be made, in order to save the life of the mother.

We realize that Congress has in its past overridden the United States Supreme Court; but at the same time, the Supreme Court can come back and say it is unconstitutional. It is the highest law of the land, and so we can keep going back and forth and back and forth. Justice Thomas said himself, ''We know of no support for the proposition that if the constitutionality of a statute depends in part on the existence of certain facts, a court may not review Congress' judgment that the facts exist.'' That is the key.

Again they ruled a Nebraska ban on partial-birth abortion, a label that has only been defined by this Congress, unconstitutional because it did not have a provision that allowed that physician to make a determination on the basis of the health of that mother.

□ 1500

We come again to talk about what our doctors do. We are not talking about criminals. We are talking about physicians who are being asked after many, many occasions for that mother to go and find a way to save the life of her unborn child. Yet when the decision has to be made to save her life and/or her health in order to have her procreate again, we put it on the floor of this House and make it a political decision.

I know that many of us can offer our own personal stories. Many women testified and pleaded with us as we listened to their testimony over the years. They did not want to have this procedure. They tried to go anywhere that they could. But because of the determination, the medical judgment, that decision had to be made. Because of the health of that mother, that medical judgment had to be made.

Can you imagine that this legislation then adds to the provisions, that they would then imprison and fine, make criminal the physician who had to do the decision or make the judgment based upon the Hippocratic oath in order to save the life and/or in this instance, rather, to do this without the governance of this particular legislation. In this instance, it would be if the physician made the judgment on the basis of saving the health of the mother.

We can do better in this body. This is not a question of stopping abortions. It is not judged that. It is a medical procedure. I ask my colleagues to vote ''no'' on the rule.

Mrs. MYRICK. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Florida (Mr. FOLEY).

Mr. FOLEY. Let me thank my colleague from the Committee on Rules for yielding me this time.

Mr. Speaker, first I rise in support of the ban and this rule. As most of you know, I never come to the floor to speak on an abortion-related issue. Under normal circumstances, I do not believe this is an issue or the business of government. It is a woman's business, a medical business, a family business, a moral business. But it is not government's business. And that also means no taxpayer money for abortions. I make an exception to this bill today, because it involves a medical procedure that the American Medical Association itself says is unnecessary and it is unnecessarily cruel.

We just heard from the gentlewoman from Florida (Ms. ROS-LEHTINEN) how cruel and how painful this procedure is. This procedure is used primarily in late-term abortions, when there is absolutely no question about the viability of the fetus. It involves the partial delivery of what clearly is a viable fetus, and that, by any standard, should amount to murder.

Regardless of anyone's position on the general issue of abortion rights, I find it incredible that anyone could condone such an abhorrent procedure, particularly one that is by no means an exclusive medical remedy.

I urge my colleagues to support this rule, and I urge them to support the ban as most Americans do. There is no reason for this procedure, there are other options than this procedure, and I think we need to stand up and recognize the life of the unborn deserves merit and consideration on this floor today.

Ms. SLAUGHTER. Mr. Speaker, I think Congress should also stand up for the rights of women and their right to live.

Mr. Speaker, I yield 3½ minutes to the gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, I strongly oppose late-term abortions, but I believe, like many Americans, that when the health of the mother is at risk, that is a decision that should be made by a woman and her doctor and not by a bunch of politicians in Washington, D.C.

Mr. Speaker, I am sad to say that this rule is shameful and this bill is a false promise. I do find it interesting that those supporting this rule and this bill keep quoting the American Medical Association. I do not know if they just did not want to hear it or if they refuse to accept it. The organization they are quoting opposes this legislation.

Why do I say this rule is shameful? First, it ensures that when this bill passes today, were it then to become law, no bill will ever have the impact of law or save one baby because the Supreme Court has made it absolutely clear, not just once but on five different occasions in their 2000 decision, that you must have a health exemption when the mother's health is at risk.

So maybe Ralph Reed was right when he said this is the political silver bullet, the partial-birth abortion bill, but what a tragedy.

The proponents of this bill and this rule are forcing a false promise upon the American people, a promise that will not help one child. This rule is shameful because it denies Members of this House a vote of conscience. I respect your conscience. I respect your right to express your conscience. You have no right on an issue of this magnitude, of such deep conscience for so many Members, no one in this House has that right to deny us the right to a vote, to a vote for an amendment that the Supreme Court would then interpret is making this bill constitutional.

I tried to offer an amendment to the Committee on Rules, it was not really radical, it was a bill I helped pass in 1987 in Texas to outlaw not one late-term abortion procedure which is not going to save a single baby, it would outlaw all late-term abortion procedures but with a health exception. For 15 years, the constitutionality of that Texas law has not been challenged. I would note that during the time that President Bush was then Governor of Texas, there was no effective effort or to my knowledge even serious effort made to change that bill. It was constitutional and it worked.

Supreme Court Justice O'Connor has made it very clear, in case anybody does not understand English, that if you do not have a health exemption in this bill, it will not ever have the impact of being law. Let me quote her from the court case of June 28 of 2000:

''First, the Nebraska statute is inconsistent because it lacks an exception for those instances when the banned procedure is necessary to preserve the health of the mother.''

In case that is not clear enough for the supporters of this rule and this unconstitutional bill, she then goes on to outline all that a legislative body has to do to make such a bill constitutional. Just add the words ''where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'' That would be the circumstance for an exception.

The people who should be upset at this bill should be pro-life Americans all across this country who have been deluded by this unconstitutional bill into thinking it is going to save one child. Had this rule allowed us to vote on a constitutionally acceptable amendment for a health exception, we actually could do some good. What a shame.

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

I would just like to remind the House that the minority does have a motion to recommit on every bill that we do. Mr. Solomon had said that he wanted to be sure that the minority always had a motion to recommit. I say that just for the record.

Mr. Speaker, I yield 2 minutes to the gentleman from Kansas (Mr. RYUN).

Mr. RYUN of Kansas. Mr. Speaker, I rise today in support of H.R. 4965, the partial-birth abortion ban, and its rule as well. Partial-birth abortion is a cruel and painful procedure. In this method the child is partially delivered. Only the baby's head is inside the mother's body. At this point the doctor inserts scissors into the baby's skull and removes the baby's brains with suction.

It is a medical fact that unborn infants can feel the pain of scissors puncturing their skull. In fact, the baby's perception of pain is even more intense at this early stage of life. A practice such as this has no place in the medical field. Even the physician credited with developing this procedure agrees that no medical situation exists to warrant the use of partial-birth abortion.

Aside from being cruel to the infant, it poses a serious health risk for the mother, including complications with future pregnancies and even death. We must protect these precious lives, these precious infants, who are only moments away from their first breath.

I urge my colleagues in joining me in voting to ban partial-birth abortion and to support the rule.

Ms. SLAUGHTER. Mr. Speaker, I yield 4½ minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. I thank the gentlewoman for yielding me this time.

Mr. Speaker, this bill before us will not prohibit any abortions. It prohibits a procedure. The abortion will still take place using another procedure, and I will not inflame the debate by describing in detail the alternative procedures that may be used. But I will point out that Nebraska had a law banning this procedure, the so-called partial-birth abortion. Nearly 2 years ago, the United States Supreme Court held in Stenberg v. Carhart that the law was unconstitutional.

The Supreme Court said many times in its majority opinion and other times in concurring opinions that in order to make the partial-birth abortion ban constitutional, the law must contain a health exception to allow the procedure when it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. That is what five Supreme Court justices said is necessary to make the bill constitutional. All five of those justices are still on the Supreme Court.

In the Stenberg case, the court said, ''The question before us is whether Nebraska's statute making criminal the performance of a partial-birth abortion violates the Constitution as interpreted by Planned Parenthood v. Casey and Roe v. Wade. We conclude that it does for at least two independent reasons.'' They said the first reason was that the law lacks an exception for the preservation of the health of the mother. The Stenberg court reminded us what a long line of cases has held, that, quote, subsequent to viability, the State in promoting its interest in the potentiality of human life may if it chooses regulate, and even proscribe abortion, except, and they put this in italics, when it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother, unquote.

It goes on to say in quotes, in case we did not understand it in italics, that the governing standard requires an exception—listen up—where it is necessary in the appropriate medical judgment for the preservation of the life or health of the mother.

The court continues talking about the health exception by saying, quote, Justice Thomas said that the cases just cited limit the principle to situations where the pregnancy itself creates a threat to health. The court says, ''He is wrong. The cases cited, reaffirmed in Casey, recognize that a State cannot subject women's health to significant health risks both in that context, and also where State regulations force women to use riskier methods of abortion. Our cases have repeatedly invalidated statutes that, in the process of regulating the methods of abortion, imposed significant health risks.

They make clear that a risk to a woman's health is the same whether it happens to arise from regulating a particular method of abortion or from barring abortion entirely.''

Finally, the court says, ''Nebraska has not convinced us that a health exception is never medically necessary to preserve the health of the mother.'' It continues by saying, ''A statute that altogether forbids the partial-birth abortion creates a significant health risk. The statute consequently must contain a health exception.''

And in case we did not get it, the court said again, ''By no means must a State grant physicians unfettered discretion in their selection of a method of abortion but where substantial medical authority supports the proposition

that banning a particular abortion procedure could endanger the woman's health, Casey requires the statute to include a health exception when the procedure is''—listen up—''necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. Requiring such an exception in this case is no departure from Casey, but simply a straightforward application of its holding.''

Mr. Speaker, whatever our views are on the underlying issue of abortion, we ought to read the decision and apply the law. The Supreme Court, in one decision, said at least five times that a health exception must be included for the statute to be constitutional. Furthermore, they put ''necessary, in appropriate medical judgment, for the preservation of the life or health of the mother'' in italics and quotation marks.

This rule that we are considering proposes a bill without a health exception. It prohibits amendments that would create a health exception. The court has made it clear that the health exception is required and, therefore, any bill that passes without the health exception will be found unconstitutional. Thus, this rule which does not allow the required health exception should be defeated.

□ 1515

Mrs. MYRICK. Mr. Speaker, I reserve my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. Mr. Speaker, I thank the gentlewoman for yielding me time and for her tremendous leadership on this issue and so many others.

Mr. Speaker, this bill is nothing more than a cruel ploy to prevent women from obtaining the safest and best medical care from their doctors. What is more, it is unconstitutional.

This bill is no different from the Nebraska law struck down by the Supreme Court 2 years ago in Stenberg v. Carhart. It has the same flaws and the same dangers. Like the Nebraska law, this bill's broad language bans the safest and most common form of abortion used in second trimester, posing an undue burden on a woman's right to choose. It has no exception for preserving a woman's health. It ties the hands of medical practitioners, condemning women to less safe procedures that may put their lives at risk.

Sandra Day O'Connor's opinion was very clear that government ''may promote, but not endanger, a woman's health when it regulates the methods of abortion.'' The decision went on to say, ''Where a significant body of medical opinion believes a procedure may bring with it greater safety for some patients and explains the medical reasons supporting that view, neither Congress nor the States may ban the procedure.''

The Supreme Court has said neither Congress nor the States may ban the procedure, so if we already know that this bill is unconstitutional, then why are we here? I believe it is to give the anti-choice forces one more chance to spread the lie that this is about a particular procedure at a particular phase of pregnancy.

So let us set the record straight. This ban covers many procedures and all phases of pregnancy. This is not about late-term abortions, this is not about the D&E procedure, this is about outlawing choice, pure and simple. It is an extreme measure that sacrifices women's health to further an ideological agenda that opposes choice.

Mr. Speaker, I ask my colleagues to join me in voting against this deceptive attempt to deny women access to choice. I urge a no vote on this rule and the underlying bill, and I urge this body to follow the words of Sandra Day O'Connor and the majority of the members of the Supreme Court that have already ruled that the bill before us is unconstitutional.

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

Mr. Speaker, I just want to comment that, once again, an unconstitutional measure which we recently did, too, that was passed by this House was to prohibit young women from crossing State lines in the United States. I have no idea who is going to police that or whether we are going to put borders up at every State to make sure people do not cross it ''illegally,'' according to the Congress. Obviously that is not going to ever become law. There is no way we can keep American citizens from going from one State to another.

Once again we try this, which is not a serious attempt to do much except make points. I urge a no vote on this rule.

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

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

The previous question was ordered.

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

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

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

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

The Sergeant at Arms will notify absent Members.

The vote on this rule will be followed by a 5-minute vote on H.R. 5120 and a 5-minute vote on House Concurrent Resolution 188.

The vote was taken by electronic device, and there were—yeas 248, nays 177, not voting 9, as follows:

[Roll No. 340]

YEAS—248

Aderholt
Akin
Bachus
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Bereuter
Berry
Biggert
Bilirakis
Blunt
Boehner
Bonilla
Bono
Boozman
Borski
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Grucci
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kerns
Kildee
King (NY)
Kingston
Kirk
Kolbe
LaFalce
LaHood
Langevin
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
Mascara
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Murtha
Myrick
Nethercutt
Ney
Norwood
Nussle
Oberstar
Ortiz
Osborne
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stenholm
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—177

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Becerra
Bentsen
Berkley
Berman
Bishop
Blagojevich
Blumenauer
Boehlert
Boswell
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clyburn
Conyers
Coyne

Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gilman
Gonzalez
Gordon
Green (TX)
Greenwood
Gutierrez
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley
Horn
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kilpatrick
Kind (WI)
Kleczka
Kucinich
Lampson
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Moore
Moran (VA)
Morella
Nadler
Napolitano
Neal
Obey
Olver
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rangel
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Simmons
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—9

Armey
Bonior
Condit
Knollenberg
Northup
Pryce (OH)
Stearns
Traficant
Whitfield

□ 1542

Messrs. LARSON of Connecticut, DEFAZIO, KLECZKA, GILMAN, and SIMMONS, and Ms. PELOSI changed their vote from ''yea'' to ''nay.''

Mr. PAUL and Mr. CRAMER changed their vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MOMENT OF SILENCE IN MEMORY OF OFFICER JACOB B. CHESTNUT AND DETECTIVE JOHN M. GIBSON

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to the Chair's announcement of earlier today, the House will now observe a moment of silence in memory of Officer Jacob J. Chestnut and Detective John M. Gibson.

Will all present, both in the gallery and on the floor, please rise for a moment of silence.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair announces that the vote on House Concurrent Resolution 188 will be postponed until later today.

TREASURY AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 2003

The SPEAKER pro tempore. The pending business is the question on the passage of the bill (H.R. 5120) on which further proceedings were postponed earlier today.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the passage of the bill.

Pursuant to clause 10 of rule XX, the yeas and nays are ordered.

This will be a 15-minute vote.

The vote was taken by electronic device, and there were—yeas 308, nays 121, not voting 5, as follows:

[Roll No. 341]

YEAS—308

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Armey
Baca
Baird
Baldacci
Ballenger
Bartlett
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Borski
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Brown (SC)
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capps
Cardin
Castle
Chambliss
Clay
Clayton
Clyburn
Combest
Cooksey
Cox
Coyne
Cramer
Crenshaw
Crowley
Cummings
Cunningham
Davis (FL)
Davis (IL)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dicks
Dingell
Dooley
Doolittle
Doyle
Dreier
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Evans
Farr
Fattah
Ferguson
Filner
Fletcher
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Gordon
Goss
Granger
Green (WI)
Greenwood
Grucci
Gutierrez
Hall (OH)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Holden
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
King (NY)
Kingston
Kirk
Kolbe
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (OK)
Lynch
Manzullo
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Mink
Mollohan
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Ney
Northup
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (PA)
Pickering
Pombo
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Rangel
Regula
Rehberg
Reyes
Reynolds
Rivers
Rodriguez
Rogers (KY)
Rogers (MI)
Rohrabacher
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Saxton
Schakowsky
Scott
Serrano
Shaw
Shays
Sherman
Sherwood
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Sununu
Sweeney
Tauscher
Tauzin
Taylor (NC)
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tierney
Towns
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—121

Akin
Bachus
Baker
Baldwin
Barcia
Barr
Barrett
Barton
Berry
Boswell
Brady (TX)
Bryant
Capito
Capuano
Carson (IN)
Carson (OK)
Chabot
Clement
Coble
Collins
Conyers
Costello
Crane
Cubin
Culberson
Davis (CA)
Davis, Jo Ann
Deal
DeMint
Deutsch
Diaz-Balart
Doggett
Duncan
Etheridge
Everett
Flake
Foley
Forbes
Ford
Fossella
Goode
Goodlatte
Graham
Graves
Green (TX)
Gutknecht
Hall (TX)
Hayworth
Hefley
Herger
Hill
Hilleary
Hoekstra
Hostettler
Inslee
Israel
Jenkins
Johnson (IL)
Jones (NC)
Kerns
Kind (WI)
Kleczka
Kucinich
Lucas (KY)
Luther
Maloney (CT)
Maloney (NY)
Matheson
McInnis
McKinney
Menendez
Mica
Miller, Jeff
Moore
Moran (KS)
Napolitano
Norwood
Otter
Oxley
Paul
Pence
Peterson (MN)
Petri
Phelps
Pitts
Platts
Pomeroy
Ramstad
Riley
Roemer
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Schaffer
Schiff
Schrock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shows
Slaughter
Smith (WA)
Strickland
Stump
Stupak
Sullivan
Tancredo
Tanner
Taylor (MS)
Terry
Thune
Thurman
Tiberi
Toomey
Turner
Weldon (FL)
Wilson (SC)

NOT VOTING—5

Bonior
Condit
Knollenberg
Stearns
Traficant

□ 1601

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

Mr. LAMPSON and Mr. RUSH changed their vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PARTIAL-BIRTH ABORTION BAN ACT OF 2002

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 498

adopted earlier today, I call up the bill (H.R. 4965) to prohibit the procedure commonly known as partial-birth abortion, and ask for its immediate consideration.

The Clerk read the title of the bill.

The text of the H.R. 4965 is as follows:

H.R. 4965

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Partial-Birth Abortion Ban Act of 2002''.

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) A moral, medical, and ethical consensus exists that the practice of performing a partial-birth abortion—an abortion in which a physician delivers an unborn child's body until only the head remains inside the womb, punctures the back of the child's skull with a sharp instrument, and sucks the child's brains out before completing delivery of the dead infant—is a gruesome and inhumane procedure that is never medically necessary and should be prohibited.

(2) Rather than being an abortion procedure that is embraced by the medical community, particularly among physicians who routinely perform other abortion procedures, partial-birth abortion remains a disfavored procedure that is not only unnecessary to preserve the health of the mother, but in fact poses serious risks to the long-term health of women and in some circumstances, their lives. As a result, at least 27 States banned the procedure as did the United States Congress which voted to ban the procedure during the 104th, 105th, and 106th Congresses.

(3) In Stenberg v. Carhart, 530 U.S. 914, 932 (2000), the United States Supreme Court opined ''that significant medical authority supports the proposition that in some circumstances, [partial birth abortion] would be the safest procedure'' for pregnant women who wish to undergo an abortion. Thus, the Court struck down the State of Nebraska's ban on partial-birth abortion procedures, concluding that it placed an ''undue burden'' on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the ''health'' of the mother.

(4) In reaching this conclusion, the Court deferred to the Federal district court's factual findings that the partial-birth abortion procedure was statistically and medically as safe as, and in many circumstances safer than, alternative abortion procedures.

(5) However, the great weight of evidence presented at the Stenberg trial and other trials challenging partial-birth abortion bans, as well as at extensive Congressional hearings, demonstrates that a partial-birth abortion is never necessary to preserve the health of a woman, poses significant health risks to a woman upon whom the procedure is performed, and is outside of the standard of medical care.

(6) Despite the dearth of evidence in the Stenberg trial court record supporting the district court's findings, the United States Court of Appeals for the Eighth Circuit and the Supreme Court refused to set aside the district court's factual findings because, under the applicable standard of appellate review, they were not ''clearly erroneous''. A finding of fact is clearly erroneous ''when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed''. Anderson v. City of Bessemer City, North Carolina, 470 U.S. 564, 573 (1985). Under this standard, ''if the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently''. Id. at 574.

(7) Thus, in Stenberg, the United States Supreme Court was required to accept the very questionable findings issued by the district court judge—the effect of which was to render null and void the reasoned factual findings and policy determinations of the United States Congress and at least 27 State legislatures.

(8) However, under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the ''clearly erroneous'' standard. Rather, the United States Congress is entitled to reach its own factual findings—findings that the Supreme Court accords great deference—and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution, and draws reasonable inferences based upon substantial evidence.

(9) In Katzenbach v. Morgan, 384 U.S. 641 (1966), the Supreme Court articulated its highly deferential review of Congressional factual findings when it addressed the constitutionality of section 4(e) of the Voting Rights Act of 1965. Regarding Congress' factual determination that section 4(e) would assist the Puerto Rican community in ''gaining nondiscriminatory treatment in public services,'' the Court stated that ''[i]t was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations. . . . It is not for us to review the congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did. There plainly was such a basis to support section 4(e) in the application in question in this case.''. Id. at 653.

(10) Katzenbach's highly deferential review of Congress's factual conclusions was relied upon by the United States District Court for the District of Columbia when it upheld the ''bail-out'' provisions of the Voting Rights Act of 1965, (42 U.S.C. 1973c), stating that ''congressional fact finding, to which we are inclined to pay great deference, strengthens the inference that, in those jurisdictions covered by the Act, state actions discriminatory in effect are discriminatory in purpose''. City of Rome, Georgia v. U.S., 472 F. Supp. 221 (D. D. Col. 1979) aff'd City of Rome, Georgia v. U.S., 446 U.S. 156 (1980).

(11) The Court continued its practice of deferring to congressional factual findings in reviewing the constitutionality of the must-carry provisions of the Cable Television Consumer Protection and Competition Act of 1992. See Turner Broadcasting System, Inc. v. Federal Communications Commission, 512 U.S. 622 (1994) (Turner I) and Turner Broadcasting System, Inc. v. Federal Communications Commission, 520 U.S. 180 (1997) (Turner II). At issue in the Turner cases was Congress' legislative finding that, absent mandatory carriage rules, the continued viability of local broadcast television would be ''seriously jeopardized''. The Turner I Court recognized that as an institution, ''Congress is far better equipped than the judiciary to 'amass and evaluate the vast amounts of data' bearing upon an issue as complex and dynamic as that presented here''. 512 U.S. at 665–66. Although the Court recognized that ''the deference afforded to legislative findings does 'not foreclose our independent judgment of the facts bearing on an issue of constitutional law,' '' its ''obligation to exercise independent judgment when First Amendment rights are implicated is not a license to reweigh the evidence de novo, or to replace Congress' factual predictions with our own. Rather, it is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.'' Id. at 666.

(12) Three years later in Turner II, the Court upheld the ''must-carry'' provisions based upon Congress' findings, stating the Court's ''sole obligation is 'to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence.' '' 520 U.S. at 195. Citing its ruling in Turner I, the Court reiterated that ''[w]e owe Congress' findings deference in part because the institution 'is far better equipped than the judiciary to ''amass and evaluate the vast amounts of data'' bearing upon' legislative questions,'' id. at 195, and added that it ''owe[d] Congress' findings an additional measure of deference out of respect for its authority to exercise the legislative power.'' Id. at 196.

(13) There exists substantial record evidence upon which Congress has reached its conclusion that a ban on partial-birth abortion is not required to contain a ''health'' exception, because the facts indicate that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care. Congress was informed by extensive hearings held during the 104th and 105th Congresses and passed a ban on partial-birth abortion in the 104th, 105th, and 106th Congresses. These findings reflect the very informed judgment of the Congress that a partial-birth abortion is never necessary to preserve the health of a woman, poses serious risks to a woman's health, and lies outside the standard of medical care, and should, therefore, be banned.

(14) Pursuant to the testimony received during extensive legislative hearings during the 104th and 105th Congresses, Congress finds and declares that:

(A) Partial-birth abortion poses serious risks to the health of a woman undergoing the procedure. Those risks include, among other things: an increase in a woman's risk of suffering from cervical incompetence, a result of cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child to a footling breech position, a procedure which, according to a leading obstetrics textbook, ''there are very few, if any, indications for . . . other than for delivery of a second twin''; and a risk of lacerations and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock, and could ultimately result in maternal death.

(B) There is no credible medical evidence that partial-birth abortions are safe or are safer than other abortion procedures. No controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures. Indeed, unlike other more commonly used abortion procedures, there are currently no medical schools that provide instruction on abortions that

include the instruction in partial-birth abortions in their curriculum.

(C) A prominent medical association has concluded that partial-birth abortion is ''not an accepted medical practice,'' that it has ''never been subject to even a minimal amount of the normal medical practice development,'' that ''the relative advantages and disadvantages of the procedure in specific circumstances remain unknown,'' and that ''there is no consensus among obstetricians about its use''. The association has further noted that partial-birth abortion is broadly disfavored by both medical experts and the public, is ''ethically wrong,'' and ''is never the only appropriate procedure''.

(D) Neither the plaintiff in Stenberg v. Carhart, nor the experts who testified on his behalf, have identified a single circumstance during which a partial-birth abortion was necessary to preserve the health of a woman.

(E) The physician credited with developing the partial-birth abortion procedure has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired outcome and, thus, is never medically necessary to preserve the health of a woman.

(F) A ban on the partial-birth abortion procedure will therefore advance the health interests of pregnant women seeking to terminate a pregnancy.

(G) In light of this overwhelming evidence, Congress and the States have a compelling interest in prohibiting partial-birth abortions. In addition to promoting maternal health, such a prohibition will draw a bright line that clearly distinguishes abortion and infanticide, that preserves the integrity of the medical profession, and promotes respect for human life.

(H) Based upon Roe v. Wade, 410 U.S. 113 (1973) and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a governmental interest in protecting the life of a child during the delivery process arises by virtue of the fact that during a partial-birth abortion, labor is induced and the birth process has begun. This distinction was recognized in Roe when the Court noted, without comment, that the Texas parturition statute, which prohibited one from killing a child ''in a state of being born and before actual birth,'' was not under attack. This interest becomes compelling as the child emerges from the maternal body. A child that is completely born is a full, legal person entitled to constitutional protections afforded a ''person'' under the United States Constitution. Partial-birth abortions involve the killing of a child that is in the process, in fact mere inches away from, becoming a ''person''. Thus, the government has a heightened interest in protecting the life of the partially-born child.

(I) This, too, has not gone unnoticed in the medical community, where a prominent medical association has recognized that partial-birth abortions are ''ethically different from other destructive abortion techniques because the fetus, normally twenty weeks or longer in gestation, is killed outside of the womb''. According to this medical association, the '' 'partial birth' gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body''.

(J) Partial-birth abortion also confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child, whom he or she had just delivered, all but the head, out of the womb, in order to end that life. Partial-birth abortion thus appropriates the terminology and techniques used by obstetricians in the delivery of living children—obstetricians who preserve and protect the life of the mother and the child—and instead uses those techniques to end the life of the partially-born child.

(K) Thus, by aborting a child in the manner that purposefully seeks to kill the child after he or she has begun the process of birth, partial-birth abortion undermines the public's perception of the appropriate role of a physician during the delivery process, and perverts a process during which life is brought into the world, in order to destroy a partially-born child.

(L) The gruesome and inhumane nature of the partial-birth abortion procedure and its disturbing similarity to the killing of a newborn infant promotes a complete disregard for infant human life that can only be countered by a prohibition of the procedure.

(M) The vast majority of babies killed during partial-birth abortions are alive until the end of the procedure. It is a medical fact, however, that unborn infants at this stage can feel pain when subjected to painful stimuli and that their perception of this pain is even more intense than that of newborn infants and older children when subjected to the same stimuli. Thus, during a partial-birth abortion procedure, the child will fully experience the pain associated with piercing his or her skull and sucking out his or her brain.

(N) Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life. Thus, Congress has a compelling interest in acting—indeed it must act—to prohibit this inhumane procedure.

(O) For these reasons, Congress finds that partial-birth abortion is never medically indicated to preserve the health of the mother; is in fact unrecognized as a valid abortion procedure by the mainstream medical community; poses additional health risks to the mother; blurs the line between abortion and infanticide in the killing of a partially-born child just inches from birth; and confuses the role of the physician in childbirth and should, therefore, be banned.

SEC. 3. PROHIBITION ON PARTIAL-BIRTH ABORTIONS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 73 the following:

''CHAPTER 74—PARTIAL-BIRTH ABORTIONS

''Sec.

''1531. Partial-birth abortions prohibited.

''§ 1531. Partial-birth abortions prohibited

''(a) Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than 2 years, or both. This subsection does not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. This subsection takes effect 1 day after the enactment.

''(b) As used in this section—

''(1) the term 'partial-birth abortion' means an abortion in which—

''(A) the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

''(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus; and

''(2) the term 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which the doctor performs such activity, or any other individual legally authorized by the State to perform abortions: Provided, however, That any individual who is not a physician or not otherwise legally authorized by the State to perform abortions, but who nevertheless directly performs a partial-birth abortion, shall be subject to the provisions of this section.

''(c)(1) The father, if married to the mother at the time she receives a partial-birth abortion procedure, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

''(2) Such relief shall include—

''(A) money damages for all injuries, psychological and physical, occasioned by the violation of this section; and

''(B) statutory damages equal to three times the cost of the partial-birth abortion.

''(d)(1) A defendant accused of an offense under this section may seek a hearing before the State Medical Board on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.

''(2) The findings on that issue are admissible on that issue at the trial of the defendant. Upon a motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

''(e) A woman upon whom a partial-birth abortion is performed may not be prosecuted under this section, for a conspiracy to violate this section, or for an offense under section 2, 3, or 4 of this title based on a violation of this section.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 73 the following new item:

''74. Partial-birth abortions ..... 1531''.

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to House Resolution 498, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from New York (Mr. NADLER) each will control 1 hour.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER: Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4965, the bill currently under consideration.

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

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, this bill, the Partial-Birth Abortion Ban Act of 2002, would prohibit the gruesome procedure of partial-birth abortion that unfortunately we are now all too familiar

with. An abortionist who violates this ban will be subject to fines, a maximum of 2 years imprisonment, or both. This bill includes an exception for those situations in which a partial-birth abortion is deemed necessary to save the life of the mother.

A moral, medical, and ethical consensus exists that partial-birth abortion is an unsafe and inhumane procedure that is never medically necessary and which should be prohibited. Contrary to the claims of partial-birth abortion advocates, this type of abortion remains an untested, unproven, and potentially dangerous procedure that has never been embraced by the medical profession.

As a result, Congress has voted to ban partial-birth abortion during the 104th, 105th, and 106th Congresses, and at least 27 states enacted bans on the procedure. Unfortunately the two Federal bans that reached President Clinton's desk were promptly vetoed.

In June 2000, the Supreme Court struck down Nebraska's partial-birth abortion ban, which was similar but not identical to bans previously passed by the Congress. The Court concluded that Nebraska's ban did not clearly distinguish the prohibited procedure from other more commonly performed second trimester abortion procedures. The Court also held, on the basis of the highly disputed factual findings of the district court, that the law was required to include an exception for partial-birth abortions deemed necessary to preserve the health of a woman.

This bill has a new definition of partial-birth abortion. It addresses the Court's first concern by clearly and unambiguously defining the prohibited procedure. It also addresses the Court's second objection to the Nebraska law by including extensive congressional findings based upon medical evidence received in a series of legislative hearings that, contrary to the factual findings of the district court in Stenberg, partial-birth abortion is never necessary, never medically necessary to preserve a woman's health, poses serious risks to a woman's health, and is in fact below the requisite standard of medical care.

The bill's lack of a health exception is based upon Congress's factual determination that partial-birth abortion is a dangerous procedure that does not serve the health of any woman. The Supreme Court has a long history, particularly in the area of civil rights, of deferring to Congress's factual conclusions. In doing so, the Court has recognized that Congress's institutional structure makes it far better suited than the judiciary to assess facts upon which it will make policy determinations. As Chief Justice Rehnquist has stated, the Court must be "particularly careful not to substitute its judgment of what is desirable for that of Congress or its own evaluation of evidence for a reasonable evaluation by the Legislative Branch." Thus in Katzenback v. Morgan, while addressing section 4(e) of the Voting Rights Act of 1965, the Court deferred to Congress's factual determination that section 4(e) would assist the Puerto Rican community in "gaining nondiscriminatory treatment in public."

Similarly, in Fullilove v. Klutznick, when reviewing the minority business enterprise provision of the Public Works Employment Act of 1977, the Court repeatedly cited and deferred to the legislative record and factual conclusions of Congress to uphold the provisions as an appropriate exercise of congressional authority. Based upon the Supreme Court precedent and separation of powers principles, I am confident that H.R. 4965 will withstand judicial scrutiny.

Mr. Speaker, it also is important for this body to understand that in addition to the health risk to women who undergo the partial-birth abortion procedure, it is particularly brutal and inhumane to the nearly-born. Virtually all of the infants upon whom this procedure is performed are alive and feel excruciating pain.

A child upon whom a partial-birth abortion is being performed is not significantly affected by the medication administered to the mother during the performance of the procedure. As creditable testimony received by the Subcommittee on the Constitution confirms, current methods for providing maternal anesthesia during partial-birth abortions are unlikely to prevent the experience of pain and stress that the child will feel during the procedure. Thus, claims that a child is almost certain to be either dead or unconscious and near death prior to the commencement of the partial-birth procedure are unsubstantiated.

H.R. 4965 enjoys overwhelming support from Members of both parties, precisely because of the barbaric nature of the procedure and the dangers it poses to women who undergo it. Additionally, the American Medical Association has recognized that partial-birth abortions are either ethically different from other destructive abortion techniques because the fetus, normally 20 weeks or longer in gestation, is killed out of the woman. Thus, partial birth gives the fetus an autonomy which separates it from the right of the woman to choose treatments for her own body.

Implicitly approving such a brutal and unjustifiable procedure by choosing not to prohibit it will further coarsen society to humanity of all vulnerable and innocent human life. Thus, Congress has a compelling interest in acting to prohibit this procedure.

Mr. NADLER. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Speaker, I want to thank the gentleman from New York (Mr. NADLER), the ranking member of the subcommittee, for managing the bill, and I would like to welcome everyone back to yet another debate since 1995 on partial-birth abortion. We have lost track of how many times this has come to the floor, been to the committee, been to the subcommittee, and is here again.

I will spare my colleagues the list of issues, but in the last 2 days, before we go on our summer recess, of legislation that is waiting by the American people to be dealt with, why and how this measure got to the floor is one of the great mysteries of the national legislative process, but we are here again, and so we have to go through this again.

It does not matter to some that the great weight of medical opinion is against this legislation that would ban partial-birth abortion, which is, by the way, very rarely used, and that is why the American Medical Association is not in support of this legislation.

It is also why the American College of Obstetricians and Gynecologists are opposed to the bill. It is also why the American Public Health Association, the American Nurses Association, the American Medical Women's Association, the California Medical Association, the Physicians for Reproductive Choice and Health, the American College of Nurse Practitioners, the American Medical Students Association, the Association of Reproductive Health Professionals, the Association of Schools of Public Health, the Association of Women's Psychiatrists, the National Asian Women's Health Organization, the National Association of Nurse Practitioners and Reproductive Health, the National Black Women's Health Project, the National Latina Institute for Reproductive Health, and the Rhode Island Medical Society are all against this bill.

They do not understand medicine or the procedures that are debated here? Maybe. They are inhumane or insensitive to their responsibilities as medical doctors? Maybe. But I doubt that seriously.

This measure is now being brought during the 7th year for an infinite number of times and the result always comes out the same.

It is important, because there is going to be maybe some debate on it. We went through this before, but the American Medical Association has stated that they are not in support of this bill. I have a letter here to that effect and would be happy to show it to anyone who is not convinced or needs more encouragement about this matter.

It is important that we realize that there is one major reason that this bill is not supported by these medical associations, and that is that the measure contains no protection for the woman, the mother. There is no exception for the fact that this procedure may save the life of the mother.

□ 1615

There is no consideration about that in this legislation. And so, therefore, these medical institutions and associations cannot support this legislation,

and the legislators, for reasons known only to themselves that promote the bill, will not put this provision in the bill.

Now, only last week when this bill came up in the Committee on the Judiciary, the gentlewoman from Wisconsin introduced an amendment to cure this defect that has been repeated by the Supreme Court every time this measure goes to the Supreme Court. It has been repeated by circuit courts wherever the cases have occurred; it has been repeated in State courts wherever it has occurred; that unless there is an exception to this ban for the safety and the health of the mother, this bill cannot stand muster. Even if it passes the House and the Senate, the Supreme Court still will tell us the same thing; that we must have an exception for the life and health and safety of the mother, or this provision is not valid.

Now, is that so difficult to understand? It has been repeated for years. It has been stated in nonlegal, simple English, and yet the authors of this bill consistently refuse, as of last week they refused, as of today, if we could amend it, and we cannot, they would refuse. Even if we went to conference and we asked to put it in, I presume they would continue to refuse. Why, I cannot offer my colleagues any logical reasons.

But, Mr. Speaker, since there is no chance of this ever becoming law, I wonder why, if my colleagues want it into law so badly, they do not accede to the existing court decisions that have never varied on protecting the mother's life in the event a partial-birth abortion would save an endangered mother's life. And so I urge once again that the majority of the Members of this body reject the measure that is before us.

Mr. SENSENBRENNER. Mr. Speaker, I yield 6 minutes to the gentleman from Ohio (Mr. CHABOT), the chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Speaker, I thank the gentleman for yielding me this time, and I wish to respond to something the gentleman from Michigan said relative to a health exception and why a specific health exception is not in there.

No matter how narrowly drafted a health exception might be, it gives the abortionist unfettered discretion in determining when a partial-birth abortion might be performed, and abortionists have demonstrated that they can justify any abortion on this ground. Dr. Warren Hearn of Colorado, for example, the author of the Standard Textbook on Abortion Procedures, who also performs many third-trimester abortions, has stated, and I quote, ''I would certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.'' It is unlikely, then, that a law that includes such an exception would ban a single partial-birth abortion.

Partial-birth abortion, after all, is the termination of the life of a living baby just seconds before it takes its first breath outside the womb. This procedure is violent, it is gruesome, it is, in the words of one of the Senators from New York some years ago, a Democratic Senator, I might add, it is infanticide.

Now, proponents of this procedure will tell a different story today. They want us to believe it is about politics or ideology. They will do anything to divert attention from the cold, hard facts about partial-birth abortion. I would remind everyone that we have seen these same tactics for many years, and that the misinformation touted by the abortion lobby was exposed as blatant propaganda back in 1997.

My colleagues might recall that the executive director of the National Coalition of Abortion Providers admitted that he ''lied through his teeth'' when he stated that partial-birth abortions were rarely performed. He went on to admit that the procedure is most often performed on healthy mothers who are about 5 months along in the pregnancy, and they are performed with healthy fetuses.

So as we debate this compassionate bill today, I ask that my colleagues remember the truth. Partial-birth abortion remains an untested, unproven, and dangerous procedure that has never been embraced by the mainstream medical community.

I would like to take a few minutes to discuss this legislation in a little more detail. Two years ago, in the Stenberg v. Carhart case, the United States Supreme Court struck down Nebraska's partial-birth abortion ban, which was similar but not identical to bans passed by previous Congresses. To address the constitutional concerns raised by the majority in Stenberg, our legislation differs from previous proposals in two areas:

First, the bill contains a new, more precise definition of the prohibited procedure that, as expert medical testimony received by the Subcommittee on the Constitution indicated, clearly distinguishes it from more commonly performed abortion procedures.

Second, our legislation addresses the Stenberg majority's opinion that the Nebraska ban placed an undue burden on women seeking abortions because it failed to include an exception for partial-birth abortions deemed necessary to preserve the health of the mother.

The Stenberg court based its conclusions on the trial court's factual findings regarding the relative health and safety benefits of partial-birth abortions, findings which were highly disputed. Under well-settled Supreme Court jurisprudence, the United States Congress is not bound to accept the same factual findings that the Supreme Court was bound to accept in Stenberg under the so-called clearly erroneous standard. Rather, as the Supreme Court explained in Turner Broadcasting System, Inc. v. Federal Communications System, the United States Congress is entitled to reach its own factual findings, findings that the Supreme Court consistently relies upon and accords great deference, and to enact legislation based upon these findings so long as it seeks to pursue a legitimate interest that is within the scope of the Constitution and draws reasonable inferences based upon substantial evidence.

The first section of our legislation contains Congress's extensive factual findings that, based upon extensive medical evidence compiled during congressional hearings, partial-birth abortions pose serious risks to women's health. So the partial-birth abortion itself poses a serious medical risk on a woman's health. It is never medically indicated, and it is outside the standards of medical care in this country.

In fact, the district court's factual findings in the Stenberg case are inconsistent with the overwhelming weight of authority regarding the safety and medical necessity of partial-birth abortion. According to the American Medical Association, and I quote, ''There is no consensus among obstetricians about its use, and it has never been subject to even a minimal amount of the normal medical practice development,'' and ''It is not in the medical textbooks.'' That is according to the American Medical Association.

In addition, no controlled studies of partial-birth abortions have been conducted nor have any comparative studies been conducted to demonstrate its efficacy compared to other abortion methods. Furthermore, there have been no articles published in peer-reviewed journals that establish that partial-birth abortions are safe or superior in any way to established abortion procedures.

Leading proponents of partial-birth abortion also acknowledge it poses additional health risks because, among other things, the procedure requires a high degree of skill to pierce the infant's skill with a sharp instrument in a blind procedure. Dr. Warren Hearn, the author of the Standard Textbook on Abortion Procedures, who also performs many of these types of procedures, has testified that he ''had very serious reservations about this procedure, and it is definitely not the safest.''

I would strongly encourage my colleagues in the House to no longer make available in this country this barbaric, inhumane practice of partial-birth abortion.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I appreciate the gentleman from Ohio's presentation. Could he explain to me why over a dozen of the medical organizations and associations that I have cited have all come out against this measure? What is the gentleman's answer to their statements?

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

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

Mr. CHABOT. Mr. Speaker, if I had time, I could list all the organizations in favor of this legislation. But just using the AMA, for example, they have sent us letters indicating they are opposed to this legislation, but what they do not like at this point is the fact a doctor could go to jail.

Mr. CONYERS. Mr. Speaker, reclaiming my time, I would ask the gentleman, what about the other dozen organizations? Does the gentleman have any reason to think why they would be opposed to this legislation?

Mr. CHABOT. If the gentleman will continue to yield, using the AMA again, for example, they do not like the fact that abortionists would have to go to jail if caught.

Mr. CONYERS. I am talking about the other dozen organizations outside the AMA that I named. Why are they opposed to the bill?

Mr. CHABOT. I would be happy to provide a long list of organizations that are in favor of this legislation. Be happy to trade lists with the gentleman. This is an inhumane, barbaric, brutal procedure which ought to be banned.

Mr. CONYERS. That is an inadequate response.

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

Mr. Speaker, I rise once again in opposition to this bill. We have been through this debate often enough to know that we will not find the term partial-birth abortion in any medical textbooks. There are procedures that we will find in medical textbooks, but the authors of this legislation would prefer to use the language of propaganda rather than the language of medical science.

This bill, as written, fails every test the Supreme Court has laid down for what might or might not be a constitutional regulation on abortion. It reads almost as if the authors went through the Supreme Court's recent decision in Stenberg v. Carhart and went out of their way to thumb their noses at the Supreme Court, and especially at Justice Sandra Day O'Connor, who is generally viewed as a swing vote on such matters and who wrote a concurring opinion stating specifically what would be needed to uphold a statute.

Unless the authors think that when the court has made repeated and clear statements over the years of what the Constitution requires in this area they were just pulling our leg, this bill has to be facially and obviously unconstitutional.

Now, if people wanted to write a bill that said we are going to ban late-term abortions, which this bill is sometimes referred to, although incorrectly, if they wanted to write a bill that said we are going to ban late-term abortions after viability, and we are going to include in the bill an exception for when the abortion is necessary for the life or health of the mother, they could do that. It would be a constitutional bill and Members could debate it in good conscience.

But they have chosen not to do that. They have chosen to write a facially unconstitutional bill that they know perfectly well is unconstitutional, despite all the nonsense we have heard today; that they know will never see the light of day because it is unconstitutional, and the Supreme Court has given us a specific precise recipe of what a constitutional bill would look like.

So this bill is political propaganda. It gives people something to go home and talk about, but falsely talk about, because it is clearly unconstitutional. The bill does not contain a life and health exception, which the Supreme Court has repeatedly said is necessary throughout pregnancy, even post viability.

I know that some of my colleagues may not like this rule. The gentleman from Ohio (Mr. CHABOT) talked about why he did not like a health exception. But there it is in the Constitution as interpreted by the Supreme Court, whether we like it or not. We have to put it in a bill if we want the bill to be constitutional.

□ 1630

Even the Ashcroft Justice Department, in its brief defending a similar Ohio statute, has recently acknowledged that a health exception is required by the Constitution. I may disagree with Mr. Ashcroft's Justice Department on whether the Ohio statute adequately protects women's health, at least Attorney General Ashcroft and his Department acknowledge that the law requires a health exception, requires that protection if it is not going to be factually unconstitutional.

This bill purports to solve this problem with findings; 15 of the 18 pages of the bill are findings, congressional findings of fact. Congressional findings of medical fact, as if we are expert doctors here, all of us. If there is one thing that this activist Supreme Court that we have now has made clear, it is that it is not very deferential to Congress' findings of fact.

Congress can declare anything it wants. It can declare the moon is made of green cheese, but it does not make it factual and it does not make the courts bound to accept anything that we say at face value simply because we say so.

While I realize that many of the proponents of this bill view all abortions as tantamount to infanticide, that is their view. It is not a mainstream view, and it is not the view of the Supreme Court of the United States. If the proponents of this bill wanted to deal with post-viability abortions where a woman's life and health are not in jeopardy, they could write a bill dealing with that issue. Forty-one States have such laws, including my own State of New York.

Members should know better than to believe that this activist conservative Supreme Court that we now have, we should know that they do not feel any particular need to defer to Congress. Members should know what comes of Congress ignoring the will of the Supreme Court. Whatever power Congress had under section 5 of the 14th amendment to effectuate the purposes of 14th amendment as a result of Katzenbach v. Morgan, which was cited by the proponents of the bill, and is cited copiously in the bill's findings, I think the more recent Boerne decision of the Supreme Court vastly undercuts those powers. And even if Katzenbach was still fully good law, as I personally wish it were for other reasons, that case empowered Congress only to expand rights under the 14th amendment, not to curtail rights under the 14th amendment.

The Supreme Court has held that the right to choose to have an abortion is a woman's right under the 14th amendment, with some limits that the Supreme Court has recognized; and the Katzenbach decision says those rights can be expanded, but not curtail them. This bill aims to curtail those rights.

Mr. Speaker, we are told that the Supreme Court must defer to congressional fact-finding even if Congress' so-called facts conflict with the preponderance of evidence in litigation before the Court. But the drafters of this bill are wrong. First, it is one of the fundamental tenets of our constitutional structure which establishes three separate branches of the Federal Government that Congress can enact laws, but it cannot decide whether those laws are constitutional. That is exclusively the Supreme Court's role.

I realize that one of the members of the Committee on the Judiciary said that the Supreme Court wrongly decided Marbury v. Madison, but for 200 years that has been the law of the land.

Second, the Supreme Court is not required to defer to our fact-finding. The Court has the power and duty to independently assess the evidence that is presented to it as it did in the Carhart decision. In the Carhart decision, the Supreme Court also specifically rejected the argument made by the bill's sponsors that the legislation need not contain the health exception because intact dilation and extraction, so-called intact D&E or D&Ex, is never necessary for a woman's health. That statement is right in the bill. The Supreme Court stated a law like H.R. 4965 that altogether forbids D&Ex creates a significant health risk and is, therefore, unconstitutional.

Mr. Speaker, this bill is not a serious attempt to deal with a problem, any problem. This bill is an attempt to fool the people of the United States into thinking that they are trying to deal with a problem.

If the sponsors of this bill wanted to deal with the problem, they know how to do it. Justice O'Connor told them specifically. They do not want a bill that would ban late-term abortions with an exception for when the health

or life of the mother is threatened. They do not want that. If they wanted that, they would write it, we would pass it, and it would be constitutional. What they want is a charade, a bill that is flatly unconstitutional, will accomplish nothing, will not see the light of day in the Senate; and, frankly, it is a charade, and the time of the House should not be wasted on charades like this when we cannot find time to do a lot of things that the welfare of this country demand that we do.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 15 seconds.

Mr. Speaker, if the gentleman from New York (Mr. NADLER) wishes to speed the process up, I am prepared to yield back the balance of my time and go to an immediate vote if the gentleman from New York will do the same.

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

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

Mr. NADLER. Mr. Speaker, I understand that the sponsors of this bill do not want an open debate.

Mr. SENSENBRENNER. Mr. Speaker, I reclaim my time.

Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE).

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

Mr. PENCE. Mr. Speaker, I rise in strong support of the Partial-Birth Abortion Ban Act. Partial-birth abortion is an antiseptic word for a barbaric procedure. Democratic Senator Daniel Patrick Moynihan, a supporter of abortion rights, described it accurately as near infanticide.

Mr. Speaker, the arguments for this bill are legion, and endeavors by the gentleman from Michigan (Mr. CONYERS) and the gentleman from New York (Mr. NADLER), they are also arguable, and we will hear those arguments today: the argument that our bill as we believe is superior to the Nebraska bill which has been rejected and struck down and will pass constitutional muster; the argument that will ensue today that this procedure is never medically necessary. The AMA said it is ethically wrong. They said it is never the only appropriate procedure, but we can argue the medicine and the endorsements. What is not arguable is that this practice is inherently and morally wrong.

What is not arguable is that the practice of delivering a newborn child alive, feet first, and holding it in the birth canal squirming while the back of its head is stabbed with a suction device is evil. That is not arguable.

Today we will render unlawful or at least begin to render unlawful what virtually every American knows in their heart is evil and morally wrong. That is why the overwhelming majority of the American people reject this practice and want it banned in the United States of America. Justice has always been defined by how societies protect the innocent and punish those who do them harm. The Partial-Birth Abortion Ban Act is such a bill. Of the innocent and defenseless the Bible admonishes that ''whatsoever you do for the least of these you do for me.'' Banning partial-birth abortion is the least we can do for the least of these.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, on page 16 of the bill it reads ''partial-birth abortion,'' a term that does not exist in medicine, ''is never medically indicated to preserve the health of the mother.''

Mr. Speaker, all of us here came to Congress having done other things in our lives; and sometimes I think that God sends us here to tell a particular story, and I feel that way today because I can tell the story of someone who had to have this procedure, and that person is the daughter-in-law of my friend, Susie Wilson. Before I was elected to Congress, Susie was so excited that her daughter-in-law, Vicki, was going to have a little girl. Susie had three boys and there were grandsons, but no girls. We were excited for Susie, and we found out at the end of Vicki's pregnancy that the granddaughter, they had already picked out a name, Abigail, that the baby's brains had formed almost completely outside of the cranium.

I saw the ultrasound picture, and it looked like there were two heads on this child. The question was not whether they would have the Abigail they wanted and prayed for, but how they would terminate this pregnancy, and whether in addition to having no Abigail, whether Vicki would also live; and if she lived, whether she would be healthy enough to continue to care for her two boys. So this procedure was what was safest for Vicki, and Susie went down there to be with her at this trying time, and it was devastating not just for Vicki but for her husband and for her whole family. It is not just a woman's issue.

So when I read these words, I know there is something else afoot here today, and it is not about medicine and caring for women's health and respecting the trauma that families go through in these very devastating circumstances. It is about 30-second ads.

That is why we are here today. We are here to tee up another round of 30-second ads in the November election. I think it is shameful. I hope we can vote against this bill and speak out against this outrageous politicization.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I rise in strong support of H.R. 4965, the Partial-Birth Abortion Ban Act. My constituents in western Pennsylvania and a majority of the public in general have urged us as a Congress to end partial-birth abortion. Congress has tried to end this unnecessary and horrific procedure, and instead we have entered into a debate of semantics about what this procedure should be called, or if it is ever necessary.

No matter what one calls it, the fact is that this is a horrific procedure that is tantamount to murder. It is a tremendously violent procedure. During a partial-birth abortion, the abortionist pulls a living baby, feet first, out of the womb and into the birth canal, except for the head. He then punctures the base of the baby's skull with surgical scissors, inserts a tube into that wound, removes the brain, causing the skull to collapse at which time the now-dead baby is then delivered. This procedure actually co-opts the birth process to take the child's life.

This procedure that we are voting to ban today, no matter what we want to label it, is unconscionable and must be ended. Critics of the bill have attempted to cloud the issue of the gruesome murder of children by saying the bill fails women because it does not permit an exception for the health of the woman.

The findings of the bill clearly note, after extensive hearings on the issue, substantial evidence exists that the preservation of the health of the mother is never cited as a factor for partial-birth abortions. No studies of this procedure have been done. It is not a medically accepted procedure.

Neither the plaintiff in Stenberg v. Carhart, Dr. Leroy Carhart, nor the experts who testified on his behalf have identified a single circumstance during which a partial-birth abortion is necessary to preserve the health of a woman. In fact, the opposite is true; and this creates a health risk for the woman, this procedure of partial-birth abortion.

It is imperative for us to act and ban partial-birth abortion once and for all. As the civilized and compassionate country that we are or hope to be, it is imperative that we act now.

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

Mr. Speaker, the previous speaker would be more impressive if the gentlewoman would acknowledge that the AMA now opposes this bill.

Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, I thank the gentleman for yielding me this time and for his leadership on this issue.

Mr. Speaker, we are just days away from the August recess, but instead of using this time to pass the very important spending bills that we have not even looked at yet, the GOP leadership has once again scheduled a vote on an issue that the Supreme Court has already struck down.

Let us be clear. This debate on the so-called partial-birth abortion procedure is nothing more than a ploy to advance the political agenda of the anti-

choice community, and they have made it quite clear that their political schemes are worth sacrificing the health of American women. But we cannot fall for this. We cannot fall for this outrageous propaganda of the anti-choice community. We cannot let them twist another health care issue into a political issue.

□ 1645

We should be promoting a woman's health, not endangering it. We should be debating concrete measures to reduce the number of unintended pregnancies and to ensure that all pregnant women have affordable access to the care they need so they can deliver healthy babies, not telling doctors how to practice medicine.

American women are counting on us to ensure that their doctors can provide the care that best meets their individual medical needs. The highest court in the land ruled that our government has no authority to force a woman to risk her health or her life in order to carry a pregnancy to term. Let us put politics aside and think of American women first. The Federal Government has no business poking its nose in decisions that are best left to a woman and to her doctor.

I urge my colleagues to reject this blatant attack on women's health and vote against H.R. 4965.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. FORBES).

Mr. FORBES. Mr. Speaker, it never ceases to amaze me when I listen to debates on the floor at the tremendous disconnect between the rhetoric we hear and the substance of the bill. This afternoon we will hear a lot of people talking about choice when they know this bill is not about choice. We will hear them talk about abortion, and this bill is really not about abortion. This bill, substantively when you look at it, is about one procedure, one procedure that is so painful to an unborn baby, so barbaric, so egregious that even the most extreme proponent of abortion has to look at it and say it shocks even their conscience.

Mr. Speaker, when we leave here tonight and all the pounding on the podium is done and all the rhetoric is finished and the lights are turned off, one thing will loom ever present, and that is this fact, that all of the testimony that we have heard on this bill suggests that an unborn baby feels pain even more than the actual baby when it is born, because of the development of the nervous system.

Mr. Speaker, when it all comes down to whether this bill should be passed or not, the question is very simple. Is there no amount of pain that is so great that we would inflict upon an unborn baby? Is there no procedure that is so egregious that we will not be prepared to step up and say that goes too far and we cannot allow that to happen? Mr. Speaker, if that is what this bill says, that this procedure goes too far, we cannot allow it to happen, we cannot allow this kind of pain to be inflicted on an unborn baby, that is why, Mr. Speaker, it is important that we pass this piece of legislation, and I hope we will do just that this afternoon.

Mr. NADLER. Mr. Speaker, I yield 5 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman from New York (Mr. NADLER) for being the leader on this issue for our committee as the ranking member on the Subcommittee on the Constitution. I also come to the floor acknowledging that this poses an emotional dilemma for so many of us, whether or not you happen to want to describe a very personal and private medical procedure that is known to be a small percentage of the judgment of physicians and individuals who have to subject themselves to such procedure out of the necessity of saving lives, I believe that it is key that we look at this as straightforward as we possibly can.

For, Mr. Speaker, I could relate to you as a woman the pain that I have experienced or I have seen from women who have tried in all manner to be able to bring a loving child into this world, women who have gone beyond any expression or any belief to be able to secure the opportunity to procreate. That is really the main definition, if you will, of a mother. It is someone who wants to nurture, wants to love and wants to be able to raise a child. But what my friends and colleagues are doing year after year after year, and appropriately for them it comes right at the time of an election, is to demonize a woman for simply wanting to have an opportunity, one, to live and, two, to be able to procreate.

I think we should pay attention to the Stenberg decision which has now come since the last time we debated this matter, and I do not believe we should take lightly the decision of six Supreme Court justices. That is right, Mr. Speaker, six, some of them concurring on this opinion. It means that the principle of a right to choose and privacy in this Nation is well documented in Supreme Court law. That is the basis of this Nation, three distinct branches of government; the Marbury decision suggesting that the Supreme Court is the supreme law of the land.

My colleagues have said that when the pornography law came forward, we came to the floor of the House. They are absolutely right. That has not yet been tested by this court. But we have before us a Stenberg decision which, let me cite for this body, makes it very clear of where the Supreme Court is going. Justice Breyer writes very eloquently that he knows what a personal decision this is for so many who debate the question of abortion. He recognizes that when we debate this question, the court has to move in and reconcile the diverse opinions, the emotion that grabs hold to individuals of their different opinions.

Justice Breyer says that this court, in the course of a generation, has determined and then redetermined that the Constitution offers basic protection to the woman's right to choose, and we shall not revisit those legal principles. We shall not revisit these legal principles. Rather, we apply them to the circumstances of this case.

They go on to say that three basic principles that we determine before us is that, in fact, we shall put them forth in the language of this opinion, the woman has a right to choose to terminate her pregnancy. Secondarily, a law designed to further the State's interest in fetal life which imposes an undue burden on the woman's decision before fetal viability, it is unconstitutional, the undue burden concept. And, third, subsequent to viability the State, in promoting its interest in the potentiality of human life may, if it chooses, regulate and even proscribe abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

Mr. Speaker, that is why this bill is unfortunately a political exercise, despite the emotion that comes to this floor, because we have asked those who propose this legislation to include an exception on the health of the mother, those who want to be able to procreate. They have not looked at the personal concerns of those who begged to have a child but yet they suggest that the medical judgment that has been made by a physician is wrong and they should be put in jail.

We have obstetricians from the American College of OB-GYN who clearly say that this bill is wrong because it denies them the right to treat their patients and save lives and protect the health of the mother.

I hope that we will see the light and be able to yield forth legislation that truly helps the American people.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma (Mr. SULLIVAN).

Mr. SULLIVAN. Mr. Speaker, I stand here today in strong support of banning partial-birth abortion. As a citizen of this great country, I am ashamed that this barbaric act occurs in the greatest country in the world, the United States of America, the greatest civilized country in the world. And I stand here as a parent, as a lawmaker, and I feel a moral obligation to stand up to fight for the rights of the unborn.

I want to describe this horrific procedure. First, the doctor sticks forceps into the mother and grabs ahold of the baby's feet so they can turn it around and pull it out. They pull the baby into the birth canal by its legs and the baby does feel pain at this point. They get the baby out and at this point the doctor has to make sure that he blocks the head before it can come out because if he does not, he cannot murder the baby, it is considered a live birth. He blocks the head into the mother and sticks scissors into the back of the

skull, opening the scissors and the baby is withering around at this point because it is feeling the pain and sticks a tube, a suction tube, into the skull and sucks the brains out, collapsing the skull, killing the baby, the baby goes limp and then they pull the baby out dead. This is a horrible act and I think we should support this bill.

People on the left talk about the life and health of the mother. What about the life and health of the baby? We ought to be protecting them and thinking about them. It is a human life. It is a human life. I have heard my friends on the left as well stand up and fight harder to protect laboratory rats. These are human beings. We have a moral obligation to stand up and fight for them. I urge my colleagues to support banning this horrific act, partial-birth abortion.

Mr. NADLER. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY of New York. I thank the gentleman from New York for yielding time and compliment him for his strong leadership on this issue and so many others.

Mr. Speaker, I rise in strong opposition to this bill and I would like to put this debate in perspective. Today marks the 167th vote against women and their right to choose since the Republicans came to this House in the majority beginning with the 104th Congress. It is nothing more than a cruel ploy to prevent women from obtaining the safest and best medical care from their doctors. This is a deceptive and unconstitutional, extreme abortion ban. Once again, some of my colleagues are trying to strip away difficult private decisions that belong in the hands of women and their doctors.

Many things are the same since the last time we voted on this type of ban that puts the rights and health of women in jeopardy. Under this bill, women are still prevented from receiving necessary and safe medical care. Under this bill, doctors who are sworn to save lives are still criminals for doing what they are supposed to do, save lives.

Under this bill, women are still at risk of losing their future fertility, their health and even their lives. But one very important thing is very different and that is a Supreme Court decision. In 2000, in Stenberg v. Carhart, a law that is very similar to the one we are discussing today, banning late-term abortions in Nebraska, was ruled unconstitutional because it did not have an exception for the health of the woman and because it places an undue burden on a woman's ability to obtain an abortion. This means that in addition to being restrictive and cruel policy, this bill is unconstitutional.

The writers of this bill are trying to be both the Supreme Court and every woman's doctor. They are making a mockery of the separation of powers and are stealing decisions from women and their doctors. This bill is a direct assault on Roe v. Wade and a direct attack on a woman's right to choose. It politicizes families' tragedies and disregards the life and health of the woman.

The bill is unconstitutional, unsafe and puts an undue burden on women. Furthermore, ACOG, the American College of Obstetricians and Gynecologists, which represents 90 percent of the doctors in this field, rejected the ban, and I quote, as inappropriate, ill-advised and dangerous.

With this bill, Congress is doing something that we have never done before and something that we should never do, and, that is, dictating to doctors and the entire medical establishment which procedure they may choose. Congress is overriding the medical profession's best judgments, even in emergency situations, and it is in direct conflict with a Supreme Court decision ruling it as unconstitutional.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentlewoman from Virginia (Mrs. JO ANN DAVIS).

Mrs. JO ANN DAVIS of Virginia. Mr. Speaker, I rise today to give my wholehearted support to H.R. 4965, the Partial-Birth Abortion Ban Act of 2002. The partial-birth abortion procedure is a brutal and a violent act performed on an innocent victim. We cannot continue to discuss this issue in the sterile language of the right to choose. We must call partial-birth abortion what it is, the murder of a baby during delivery as he or she fights for their first breath of air and struggles to survive. We have to come face to face with the cruel injustice of lives quickly and callously ended.

I will also note that there is an appropriate choice for these growing children, the choice of allowing them to be raised by a loving, adoptive family. Former Surgeon General C. Everett Koop has stated that a partial-birth abortion is never medically necessary to protect a mother's health or her future fertility. On the contrary, this procedure can pose a significant threat to both. In fact, were the same child at the same stage of development outside the mother's womb, he or she would be provided life-preserving care and continual medical attention. But if that same child is deemed unwanted by the mother, its life is violently ended. I say to my colleagues that this makes no sense and it is time for Congress and the President to act to end this madness.

Mr. Speaker, the argument has been made that this bill is somehow unconstitutional and that the Supreme Court will strike it down like it did the Nebraska partial-birth abortion ban. I will note that I trust the expertise of the Committee on the Judiciary in crafting a bill that will pass muster with the court. But even if it were certain that this legislation as soon as it was passed would be struck down by an imperial judiciary, we must, as Members of Congress, discharge our duties to at least attempt to protect the civil rights of the most vulnerable, those least able to protect themselves.

I am proud to be a cosponsor and to support this legislation. I urge my colleagues to do the same.

Mr. NADLER. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from California (Ms. SOLIS).

□ 1700

Ms. SOLIS. Mr. Speaker, I would like to thank the manager on this side for yielding me time to speak this evening.

Mr. Speaker, I am disappointed also that we are spending these last few hours here while we are in session before we go on a 5-week break to talk about this issue, because I do not think it is one that the public and constituents in my district really think is of an urgent nature. I say that in a very respectful way, because I truly believe that to understand this issue of late-term abortion is to understand the circumstances that some women have had to take in their past because of something that was not in their control.

I also want to share a personal experience, not one of my own, but of a family member. My older sister many years ago had to have a late-term abortion. This was going to be her third child. The last one she had was already at age 12, so she wanted to have another child. She was very excited about her pregnancy. In her fifth month she was told by her doctor that this fetus was not forming or developing appropriately, in fact, it did not have a brain, so if she were to continue with this pregnancy, she in fact would not be giving birth to anything that would be able to sustain itself. She was therefore then required to make a decision.

She is a Catholic. She grew up in the same household I did. She has the same values, if not stronger. I do not happen to have any children. She has. I will never forget the day she got out of hospital and I visited with her at home. She was traumatized. She did not want to part with that fetus she was carrying for five months. It was a part of her and her family.

Let me tell you there are many women that feel that way that have to make those kinds of decisions, not because they wanted to abort for the sake of aborting, but because there are other physical limitations that are out of our control.

You can shake your head and say no, you are not talking the truth. Let me tell you, there are millions and millions of people out there who do understand this issue and do know that there is sympathy across the country regarding a woman's right to choose. This is a wrong approach, and I would ask my colleagues to vote against this proposition.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Tennessee (Mr. BRYANT), a former member of the committee.

Mr. BRYANT. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, as I was sitting here thinking as we have had this debate a couple of times in the past, it comes to my mind that the baby eagle in an egg actually has more Federal legal protection from injury and harm than a partially born baby has.

I do rise in strong support of this legislation. We passed it twice before with the help of all our pro-life Members and actually many pro-choice Members, because this procedure is so gruesome. The bills were vetoed in 1996 and 1997 by then-President Clinton, but we now, I believe, have a President who will sign a ban on this horrible procedure.

The legislation that we are considering today has a new, more precise definition of the prohibited procedure and should withstand the Supreme Court scrutiny, if challenged.

Furthermore, our bill includes a Congressional finding that the partial-birth abortion is never, and I underline that, is never necessary to protect the woman's health. Former Surgeon General C. Everett Koop has said, ''Partial-birth abortion is never medically necessary to protect a mother's health or her future fertility. On the contrary, though, this procedure can pose a significant threat to both the mother and her future fertility.''

I agree with Dr. Koop. There is actually no evidence that partial-birth abortion is a necessary procedure to protect a woman's health. However, there is an abundance of evidence that a baby in the final trimester of pregnancy is extremely sensitive to pain.

Folks who oppose this have insisted that anesthesia kills the babies before they are removed from the womb. This is a myth that has been refuted by professional societies of anesthesiologists. In reality, the babies are alive and experience great pain when subjected to a partial-birth abortion.

I believe the Federal Government has a duty to protect all Americans, including the born, unborn and partially unborn. I ask my colleagues today, both pro-life and pro-choice, to join in banning this gruesome procedure.

Mr. NADLER. Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, well, here we are with 2 days left before the August recess, and here is what we still have to do: Consider expulsion of only the second Member of Congress in our Nation's history, have nine appropriation bills left to pass, establishing a Department of Homeland Security so we can protect our country against terrorism, and dealing with the financial crisis our country is facing. Instead, what are we doing? The Republican leadership has scheduled 2 hours of debate on so-called partial-birth abortion. What is going on?

Well, like the swallows returning to Capistrano, it is an election year, and now it is time to bring up this hot button issue. But with a difference this year, with a twist, because this year the Supreme Court has held a bill almost identical to the bill up for consideration today unconstitutional.

From the wild rhetoric we are hearing on the other side today, one would think that women wake up suddenly in their ninth month of pregnancy and say, ''You know, I am tired of being pregnant. I think I am going to go have a partial-birth abortion.'' This is insulting to the women of this country and to the women whose tragic stories we have heard on the House floor today.

It is simply not true. This is a very rare and tragic procedure which happens only under the most difficult of circumstances and which the U.S. Congress should not be legislating, but which a woman and her family and her doctor should be deciding.

For the woman whose health is in serious danger, being able to make the most medically sound decision is vital. These are tragic moments in people's lives, as we have been hearing today, and we should not be interfering in that.

The gentleman from Virginia and others said this bill is just simply about outlawing one medical procedure. Well, that may be true, but Congress would not think about getting involved in medical procedures of any other kind.

It is really appalling to me, because this is an issue where politicians for electoral gain try to dictate a woman's actions, impugn her motives, question her morality and ultimately remove her authority to make a decision about her own body, and that is what we are debating on the floor today.

But there are two things different, as I said. The first one is the Supreme Court overturned the Nebraska case on the grounds that you have to have a health exception for the woman. Guess what? This bill has no health exception. There is no health exception whatsoever. If this bill were passed into law, the Supreme Court would find it unconstitutional. This is a fact. Let me say it again: If this bill were passed into law, the Supreme Court would find it unconstitutional. Why on Earth would we pass a bill we know for a fact is unconstitutional?

Secondly, while the bill purports to ban only a certain procedure, in fact the actual language is much broader and could be used to ban many other kinds of abortion. To be honest, that is the true ultimate goal of the proponents of the bill.

So I say vote yes on the motion to recommit, which will add a health exception, and vote no on final passage.

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

Mr. Speaker, I think that saving the lives of some partially-born babies is worth 2 hours of our time.

Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. HYDE), the distinguished former chairman of the Committee on the Judiciary,.

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

Mr. HYDE. Mr. Speaker, there is so much fantasy about this issue. The pro-abortion people shudder from using that term, and they use a euphemism, ''reproductive rights.'' They do not refer to the unborn baby in the womb, they refer to the ''products of conception.'' And when that unborn baby dies as a result of an abortion, by the way, they want to ''terminate'' a pregnancy. It is exterminate. That is what they want to do. And the ''choice,'' for pro-choice, they get the choice of a dead baby or a live baby.

You can listen carefully, as I did, to the statements made by the opponents of this legislation, and you listen and strain your auditory nerves. You will not hear the word ''baby'' or ''child.'' That is the X factor. That is the missing element here. You will hear about the woman. You will hear about her difficulties, and well we should.

But the baby is absolutely missing, although if you look through an ultrasonograph, a pregnant woman knows she has a little tiny member of the human family. And at what point does that tiny member of the human family get protected by the Equal Protection Clause and due process of our Constitution? No person shall be deprived of life, liberty and the pursuit of happiness, nor shall any person be deprived of equal protection of the law.

When does that attach? When the baby is four-fifths born, as in this grotesque, gruesome process called partial-birth abortion? Four-fifths born, and the doctor takes a scissors, called a Metzenbaum scissors, and shoves it in the back of the neck of the little baby, and then, with the opening, sucks out the brains to collapse the skull.

Talk about grotesque. You would not treat a laboratory rat like that. But the baby, the X factor, the fetus, the product of conception. Well, maybe when it is in the womb and you have to use an ultrasonograph to see it, you can abstract it that way. But when it is four-fifths born, it is there and you cannot avoid it.

This situation is lamentable. But I would say to the women who defend abortion, look around the globe and see who takes the brunt. The little girl babies. They are the ones that are thrown away in certain countries because there are too many of them.

It is to protect every little child that the pro-life movement advances its cause. Human life is precious. I see Members with little children on the floor. Those little children were once fetuses, embryos. They were tiny, tiny little cells, and an abortion kills that life. That is wrong.

Mr. NADLER. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, Coreen Costello was a pro-life Republican and

mother of three when her pregnancy turned tragically fatal for her child. Her doctors preserved Mrs. Costello's fertility with a procedure being outlawed in this bill. She then became pregnant again and gave birth to her fourth child.

Listen to this loving mother's words. ''Because of this procedure, I now have something my heart ached for, a new baby, a boy named Tucker. He is our family's joy, and I thank God for him.''

Mr. Speaker, no Member of this House has the right to substitute his or her judgment for that of a physician and a mother faced with a rare but tragic situation where a pregnancy is failing, a child has no chance of living outside of the mother's womb, and the goal is to save a mother's fertility or health. No Member has that right, not one.

If there is one late-term abortion in America for frivolous reasons, that is one too many, regardless of the procedure used. I am strongly opposed to late-term abortions. But I believe when the health of the mother is at risk, that is a choice, a decision that should be made by a woman and her doctors, and not by politicians in Washington, D.C.

That is not just my opinion, that is the opinion of the United States Supreme Court in its opinion dated June 28, 2000. In that indication, the Supreme Court and its majority of justices made it very clear that the Nebraska partial-birth abortion law was unconstitutional, in these words.

□ 1715

''. . . Because it lacks an exception for those instances when the banned procedure is necessary to preserve the health of the mother.''

That is as clear as the English language can be. Justice O'Connor, the swing vote on this issue, has made it clear. No health exception for a woman, no law; no law, not one baby saved.

Mr. Speaker, this bill has two flaws in it that make it little more than politics at its worst, as Ralph Reed said, a political silver bullet. First, it is unconstitutional, therefore meaningless. It is a false promise. Second, if the authors of this bill truly believe that American women are monsters who would take a perfectly healthy baby seconds before a perfectly healthy child birth and puncture its brain and kill that innocent child, then why is it that they just want to outlaw one procedure? If you assume the woman is that kind of a monster, then under your bill even if it were law and were constitutional, which it is not, then the woman can choose to use other late-term abortion procedures. Once again, a meaningless law, a meaningless bill that will not save one baby's life.

I think the people who should really be offended by this bill are those genuine pro-life Americans who want to stop late-term abortions. I want to stop late-term abortions, and I hope others who do would ask the proponents of this bill two questions. Is politics so important, you would rather pass a clearly unconstitutional bill than a bill that could actually become law, a bill like I helped pass in Texas 15 years ago that is still the law of that State today? Second question: Why are you outlawing one procedure and leaving every other late-term abortion procedure perfectly legal?

This bill is politics at its worst. It is a false promise.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Mississippi (Mr. PICKERING).

Mr. PICKERING. Mr. Speaker, I rise in strong support of this measure to ban a horrific procedure. For my generation, we have walked in as mothers and fathers into our doctors' offices and we have had the stethoscope with amplifier hooked to the mother's stomach. We have heard the heartbeat of the child at 11 weeks fill the room with a beating and a pounding and a pulsing of life. In the second trimester in the fourth month, we walk in and with modern technology in the window through the womb we see our babies. We know whether it is a boy or a girl. We see their heartbeat, we see their arms and legs kick and move. We see them suck their thumbs. We as a generation have had the experience of being in the delivery room to actually hold a baby as it arrives, to cut the umbilical cord, to know that what was once hidden is no more, what was once a mystery is now a revelation of life. I would ask us all, then, to stand for the life that we know, to stop this horrific practice.

Mr. Speaker, my generation has had the opportunity to walk into our doctor's office, and through the use of technology we have heard the beating of our unborn child's heart, we have seen the movement of the child's arms and legs. We know whether the child is a boy or girl. We have been able to be present in the delivery to room to hold the newborn child and cut the umbilical cord. What was once hidden is now known. What was once a mystery is now a wonderful revelation of newborn life.

I would ask my colleagues that before they cast a vote on this measure, listen to that heartbeat. Look into the womb. Feel the kick of the baby's legs and arms.

Before the abortionist sticks the scissors into the baby's skull, turn the baby. Look at that face and the fullness of life that resides in it. Feel the baby's body and the very essence of life. If you still have the courage, then insert the scissors. Collapse the brain, and take the life. But, if you do that, our nation, our people, or anyone who allows this or commits this act violates the nation's ideal that all are created equal and are endowed with the unalienable rights of life, liberty, and the pursuit of happiness.

If we allow this to continue as a nation, we have lost our moral compass. We have lost our conscience.

Mr. NADLER. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Speaker, the more I listen to this debate, the more opposed I come to this legislation. This ban on late-term abortion unconstitutionally endangers women's health. In the Stenberg v. Carhart trial, which ruled a Nebraska law that banned the so-called partial-birth abortion bill unconstitutional, the Supreme Court concluded that women's health must always be protected. According to the Court, the abortion restriction would force women to use riskier forms of abortion. Additionally, they ruled that if a current medical procedure set in place may be safer for some women in certain circumstances, then it cannot be banned. For this reason and reaffirmed in 1999, this ban is still unconstitutional. As of today the American Medical Association, which is one of the largest physician organizations in America, who usually supports abortion ban legislation, has changed their stance and concluded this late-term abortion act unhealthy.

Mr. Speaker, I support a woman's right of choice. I am in favor of medical decisions being made in private by women and their families in consultation with their doctors, and not politicians. I am a full supporter of choice without reservation. It should be the definitive right of the individual to make personal decisions regarding their health. I believe the late-term abortion ban invites the government into our doctors' offices and limits the choices of women.

I trust women to make decisions that affect their life, body and destiny. There is no more fundamental challenge than protecting a woman's reproductive health. That means guaranteeing a woman's right to choose. This so-called partial-birth abortion ban is part of a political scheme to sensationalize the abortion debate.

The truth is that the phrase ''partial-birth abortion'' is a political term, not a medical term. Partial-birth abortion bans have never been about banning one procedure nor about late-term abortions. They are deceptively designed to be intentionally vague in the attempt to ban abortion entirely. This bill opens the door for legislators to ban even more safe abortion procedures. Therefore, I urge that we protect the woman's right to choose, we protect the woman's right to protect her health, and vote to protect the woman's right to protect her life. Vote ''no'' to the partial-birth abortion ban.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. HYDE).

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

I heard the gentleman from Illinois (Mr. DAVIS), my good friend, quarrel with the term ''partial-birth abortion.''

If we think of the operation, the procedure, as they laughingly call it, it is partial birth, and it is an abortion. I know my colleagues hate the word ''abortion.'' We never see a doctor saying, I am an abortionist. But that is

what they are; they are abortions. ''No Member has the right.'' What? We have a duty to defend the defenseless, and there is nothing weaker, more pitiful, more vulnerable than a little baby in the mother's womb, and the mother, who should be its protector, has suddenly become its adversary. Somebody has to speak for that little baby.

Former Senator Moynihan never voted with us once over the years; but when this came along, he said that it is too close to infanticide, infanticide, and that is exactly what it is.

As far as the Supreme Court, we can keep trying to have them get it right, can we not? You would not be satisfied with Dred Scott, would you?

Mr. Speaker, this is a good bill and ought to be supported.

Mr. NADLER. Mr. Speaker, I yield 4 minutes to the distinguished gentlewoman from Connecticut (Mrs. JOHNSON).

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

First of all, there are no third-term abortions of healthy babies in America. It is illegal. But it is an absolutely horrendous insult to the women of America to think that we would carry an infant through pregnancy and arbitrarily and lightly choose to take that infant's life. It is not done. Women do not do it.

As one who has carried children, four children full term and experienced both the joy and the pain of childbirth, I know of no woman who is not transformed by pregnancy and does not value that life she carries within her; and the implication that we do not is so offensive to me that I am astounded that my colleagues can get up here and present the image of women, for convenience sake, choosing a late-term abortion.

There are no late-term abortions of healthy babies that are legal, and this bill does not ban late-term abortions. This bill attempts to ban a specific procedure, and it does it so clumsily that it does not differentiate between the constitutionally prescribed pre-viability and post-viability procedures and, therefore, tramples on the rights of women to make choices about the responsibilities they are going to take throughout their lives.

We have in America the right to make that choice early in a pregnancy. We need that choice. We deserve that choice. We have that right, and we have the right to do it in a medically responsible way; and this bill abrogates that right because it does not differentiate between the normal surgical procedure that is used early in pregnancy and the specific procedure it is trying to eliminate.

This legislation, as introduced, applies throughout a pregnancy and disregards the crucial constitutional distinction between pre- and post-viability abortions.

Furthermore, it completely disregards the issue of the woman's health. It does not matter in this bill whether she has two, three, or four children depending upon her; the government is going to make the decision about how her health should be managed.

In 2000, the Supreme Court ruled in Stenberg v. Carhart that a Nebraska statute banning so-called partial-birth abortion was unconstitutional for two independent reasons. The statute lacked the necessary exception for preserving the health of the woman, and the definition of the targeted procedure was so vague it could prescribe other abortion procedures. Well, these arguments apply to this bill, both of those arguments. Mr. Speaker, H.R. 4965 contains no exception to preserve the health of the woman; and it is so vague it can be applied to the D&E procedure. Its prohibition can be applied to that and, therefore, does, without question, abrogate the right of women to handle their reproductive capabilities responsibly.

This is, in my estimation, the worst bill that has come before this Congress. I have wanted for a long time to just say how deeply offended I am that my male colleagues and some pro-life colleagues whose views I deeply respect could assume that American women would choose to abort a late-term child that they have carried within them. I know of no woman who ever has; I know of no case that shows a healthy child being aborted for the purposes of destroying that child. I hope that this will be the last time we will debate this, and I hope we will defeat this issue.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. BARCIA).

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

I rise in support of H.R. 4965, the Partial-Birth Abortion Act of 2002, and I urge my colleagues to vote in favor of this important legislation. I also am proud to serve as the cochair of the pro-life caucus along with the gentleman from New Jersey (Mr. SMITH). The courageous leadership of the gentleman from New Jersey (Mr. SMITH) in legislative efforts to boldly and consistently protect the unborn is unparalleled. It has been a pleasure to share this important chairmanship with him these past several years. It is also a pleasure, as the lead Democratic sponsor of H.R. 4965, to say how much I appreciate the leadership of the gentleman from Ohio (Mr. CHABOT) for his steadfast leadership and commitment on this issue and so many other important pro-life issues that we deal with here in the Congress. I thank the gentleman.

Partial-birth abortions are most often performed in the second or third trimester, and I am particularly troubled by the horrifying aspects of late-term abortions, because there is no doubt that the partial-birth abortion procedure inflicts terrible pain upon the baby being killed. H.R. 4965 not only bans this type of atrocious procedure, but imposes fines and a maximum of 2 years imprisonment for any person who administers a partial-birth abortion. This gruesome and brutal procedure should not be permitted.

I strongly believe in the sanctity of life, and if 80 percent of abortions are elective, we must reconsider and reevaluate the values society places on human life. In many cases, this is a cold, calculated, and selfish decision.

□ 1730

This is not a choice issue, this is a life and death issue for an innocent child. It is long overdue that this heinous procedure is made illegal.

Although I am a pro-life Democrat, I am that grateful we now have a pro-life president who is signing this critical piece of legislation into law. The President's support will abrogate the need for a two-thirds vote in the Senate which has proven impossible to attain. The prospects for making the Partial Birth Abortion Ban Act the law of this land have improved greatly. Please vote to end this horrific procedure once and for all.

Mr. NADLER. Mr. Speaker, I yield 5 minutes to the distinguished gentlewoman from Indiana (Ms. CARSON).

Ms. CARSON of Indiana. Mr. Speaker, I come to the floor today and have had to come in and out, because it is very difficult for me to consume the kind of emotionally charged graphic illustration and display of the subject matter that is contained in this legislation.

I came to Congress, Mr. Speaker, in 1997, and since the time that I was sworn in to the 105th Congress, I have had to vote on abortion 109 times; 109 times this House, this United States Congress has brought before it this issue of abortion. It is mind boggling that we have children, on a daily basis, since we are all concerned about the well-being of our children, and I doubt that none of us are truly concerned that we have children around this country who have malnutrition, who lack proper medical care, who commit suicide, and it has been in the news on a regular, daily basis about children who are being abused, who are being sexually molested, who are being kidnapped from their homes, and there is not one squeak of any comment from the other side about the vulnerability of those children.

Yet, I have to come down to this floor 109 times since I have been in Congress to vote on a matter of abortion.

It does make you mighty suspicious that an issue as delicate as this, the choice that a woman makes with the help of her medical doctor, would have to come before the United States Congress. And it is especially suspicious that medical privacy is an issue here; and there is no reference to medical privacy at all. How would anyone know in the House of Representatives that a woman, in consultation with her doctor, a very private decision engaging in

a very private medical procedure, how would one here know about it unless there is something in this bill that I have not read that provides hidden cameras maybe in a hospital room or doctor's office that allows some peeping tom to stand there and watch what procedure is administered against a woman in consultation with her doctor.

What privilege is there in this bill that violates medical privacy? How would any Members know that a woman has had an abortion unless there is some peeping tom exemption in this bill that allows you to see what happens?

It just makes me ill, and I know my opponent is recording this because the other side has called him and told him to do that. And I hope he plays the full thing.

Every time this is here I vote against it. We have voted $594 million worth of pay raises for this Congress since I have been in here, but we have not done diddly squat about all of these innocent and vulnerable children who have been kidnapped from their homes who are being killed on their driveways by predators.

The gentlewoman from Texas (Ms. JACKSON-LEE) has a concept about a DNA bank at the Attorney Generals Office. Those are the kind of issues that we need to be exploring for the children of America, and not providing some peeping tom, ill-conceived, 110th time in the Congress on an abortion issue.

There is a poet that all of us are all familiar with that starts off, ''Hear my humble cry; and while on others you are calling, do not pass me by.'' And I do not want all of these kids who are victimized by these criminals in this country to be passed by while we are spending two crazy hours engaging in an unconstitutional debate that only further the feathers of somebody's political aggrandizement.

Mr. SENSENBRENNER. Mr. Speaker, shortly the Democrats will offer a motion to recommit, and I hope the vote on that is not charged against us.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Wyoming (Mrs. CUBIN).

Mrs. CUBIN. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for yielding me time.

Mr. Speaker, I have listened to the entire debate today and I cannot help but think of a television program I was watching about crime the other day about pickpockets and purse snatchers. There are groups of people that create a diversion so that someone else can go up and commit the evil deed, but the diversion takes place, and this debate today reminds me of that.

Being accused of trying to eliminate a brutal, violent, inhumane act for political purposes for, or questions of constitutionality simply reminds me of pickpockets because the diversion just does not cut it.

According to Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, and some other medical sources, it appears that partial birth abortions are performed 3,000 to 5,000 times annually. Even those numbers could be low. Based on published interviews with numerous abortionists and interviews with Mr. Fitzsimmons in 1997, the ''vast majority'' of partial birth abortions are performed in the fifth and sixth months of pregnancy on healthy babies of healthy mothers.

We have already heard that the statement from former Surgeon General C. Everett Koop that ''partial birth abortion is never medically necessary to protect a mother's health or her future fertility. On the contrary, this procedure can pose a significant threat to both.''

Dr. James McMahon, who is considered to be the developer of this method, explicitly acknowledged that he performed such abortions on babies with no flaw whatsoever, even in the third trimester for reasons such as the mere youth of the mother or psychiatric difficulties.

These abortions do occur. It is arrogant of anyone to regard human life as flawed, and we need to support this bill and stop this violent process.

Mr. NADLER. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. MILLENDER-MCDONALD).

Ms. MILLENDER-MCDONALD. Mr. Speaker, well, as President Reagan has often said, ''Here we go again.''

It is amazing to me that we have been on this floor, especially during an election year, with this very issue that comes before us as if to say, as my dear friend from Indiana (Ms. CARSON) said, it raises a certain amount of suspicions.

Mr. Speaker, I stand here today protesting strongly against H.R. 4965 which seeks to limit a woman's right to choose medical options appropriate for herself and her family in consultation with her physician.

As Members of Congress, we are elected by our constituents to present their interests fairly here in Washington. We are not sent here to enact poorly-constructed legislation that would hinder the health and well-being of those entrusting us to make laws. Therefore, I must vehemently register my opposition to H.R. 4965 as an infringement on the personal choice and free will of women and families I am here to represent.

H.R. 4965 is bad legislation because it eliminates a health exception for women, and given that the Supreme Court has indicated that every restriction must allow an abortion when necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. Women and their families must be able to make decisions regarding their medical care along with their doctors and without the interference of Congress.

It seems to me then, Mr. Speaker, we are being subjected once again to the narrow political agenda of a group of people in deference of what is good for women's health and what is defined as legal by the Supreme Court. We must continue to be vigilant in preserving a woman's right and to make necessary choices for her own health in accordance with the law.

I would say simply that women across this country now are looking in on this and they too are concerned about why we have to constantly be given the time spent on this type of misguided piece of legislation when we can well be talking about the 11 million children who are uninsured. I have yet to see that type of law come to the floor.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. BARR), a member of the Committee on the Judiciary.

Mr. BARR of Georgia. Mr. Speaker, I thank the distinguished chairman of the Committee on the Judiciary for the privilege of standing in the well of this House to address the barbaric procedure commonly euphemistically known as partial birth abortion. It is murder, pure and simple.

The previous speaker quoted that great president, the greatest president of the 21 century, Ronald Reagan, ''Here we go again.'' You are darn right. It needs to be reminded over and over again to the American people what a barbaric procedure this is. And at least in this instance, all Americans can join together and say we, at least, draw this line. We, at least, say enough is enough.

President Reagan, to quote him, also spoke in January of 1985 when he was sworn in as our President for a second term of something he very quietly but very eloquently called the ''American sound.'' He said the American sound is that sound which is echoed out across the ages, across the continent, across our continent. It is the sound, he said, of a Nation conceived by God, created in God's image for God's purposes. He said, it is a Nation that has always held in its heart compassion and love for fellow human beings.

I think if President Reagan were here today, he would say the American sound is alive and well in the House of Representatives. It is indeed the sounds of love and compassion, belief in God, and belief in the unborn, and belief in the right of that child, that precious baby to be born and to serve in God's image on this great land and in this great country.

I believe if President Reagan were here today he would say, thank you, Congress, thank you America, for standing up for the least defensive among us, for the most defenseless among us.

If, indeed, our colleagues join us as we expect today in passing this ban on this barbaric procedure, which no American can truly justify or defend, then President Reagan would indeed say, It is morning again in America for America's babies. Thank God.

Mr. NADLER. Mr. Speaker, I yield 2½ minutes to the distinguished gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Speaker, I thank the gentleman for yielding me time.

Here we are on cue, Mr. Speaker. The annual late term abortion bill. This is the bill where Congress tries not to make law but to make mischief. Why would Congress want to put a woman in jeopardy of her health and a physician in jeopardy of prison for 2 years and a fine by prohibiting one and only one procedure?

Actually, Congress does not want to put the physician in jeopardy. What Congress wants to do is to keep the physician from performing any abortion including legal abortions. And if this bill passes, that is exactly what will happen across this country.

The point of this bill is to make it legally risky to perform any abortion because the physician cannot be sure he will not be prosecuted. That is why the courts have struck down these late-term abortion bans time and time again.

The bill tries to simply hop over Roe versus Wade with 15 pages of congressional findings. But congressional findings cannot overrule a Supreme Court decision. Congressional findings cannot nullify a woman's constitutional right. Congressional findings cannot defeat a woman's right to have an abortion if her health is in danger. This bill is not even a nice try. It is plainly unconstitutional. Worse, it is an insult to the women of America.

□ 1745

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS).

Mr. PITTS. Mr. Speaker, partial-birth abortion is one of the most violent and gruesome acts known to mankind. It is hard to believe that it is legal at all in a Nation that was founded on the principle of human rights.

Some years ago it was believed that partial-birth abortion was a very rare procedure only performed in the direst of emergencies. That was not true. The fact is there are some people in this country who are so radical and extreme in their defense of abortion that they are willing even to lie to defend this violent kind of act.

Five years ago, the executive director of the National Coalition of Abortion Providers told the New York Times that he had lied about how often partial-birth abortions are performed, lied about how healthy the mothers were, and lied about the viability of the children who were needlessly killed and, in fact, he said he ''lied through his teeth.'' His words, not mine.

More often than not, this is a baby that would have every chance of surviving if it were delivered normally, and usually the baby has developed well beyond the stage where it can feel every bit of pain we would feel if we were subjected to the same procedure. We have heard the horrific procedure described here on the floor.

Understand that the baby is given no anesthetic or painkiller of any kind. Imagine being stabbed in the back of the neck with a pair of scissors. Imagine how it must hurt. That is how much it hurts the baby.

All of this is done, Mr. Speaker, and it is perfectly legal today in the United States. Legal, yes; necessary, never. No partial-birth abortion is ever medically necessary, according to the best medical experts in America.

The vast majority of the American people want this barbaric, violent procedure to be illegal. Vote for banning the partial-birth abortion procedure.

Mr. NADLER. Mr. Speaker, may I inquire how much time I have left, please.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The gentleman from New York (Mr. NADLER) has 5½ minutes remaining. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 23 minutes remaining.

Mr. NADLER. Mr. Speaker, I yield 1 minute to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for yielding me the time.

This bill is an affront to all women, and it is an insult to the medical profession, and it violates the Constitution.

Abortion is a constitutionally protected medical procedure in this country, and this bill flatly aims to take away that right. It does not aim to ban a single procedure that proponents of this bill like to call partial-birth abortion. If it did, the sponsors of this bill would have accepted medical language that actually describes a medical procedure, but they rejected this language.

Instead, the proponents chose to play doctor and describe a so-called medical procedure in their own words. This bill does not even ban what some may call late-term abortion because it never specifies a point in the pregnancy after which an abortion is banned.

What this bill really does is chip away at Roe v. Wade which established the constitutional right of women to control their own bodies. The proponents of this bill do not trust women to make their own decisions about their reproductive health. They do not trust women to talk to their doctors about their health, about their choices, and then make their own informed decisions. They do not want to give women the power and freedom to make their own decisions about their reproductive lives, despite the fact that the Supreme Court has repeatedly upheld this right in the face of countless challenges.

I urge a no vote.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, I thank the distinguished chairman for yielding me the time.

Mr. Speaker, a society can be measured by how well—or poorly—it treats the most vulnerable in its midst, and partial-birth abortion, like all abortions, is a horrific violence against women and violence against vulnerable little boys and girls.

Mr. Speaker, 30 years after Roe v. Wade, I believe it is time for a serious reality check and a compassion check. Mr. Speaker, abortion on demand has claimed the lives of more than 42 million children and although grossly underreported, has resulted in death, injury and emotional trauma to women. Forty-two million babies have disappeared off the face of the earth—slaughtered by abortion. Look at it this way. Yankee Stadium holds about 57,500 people. If we filled Yankee Stadium to capacity with children slated for execution, we would fill that stadium every day for 730 days. Perhaps this to give us some idea of the magnitude of the loss of life—42 million dead. It is of genocidal proportions.

Abortion methods, Mr. Speaker, are violence against children. Abortion methods dismember and chemically poison children. There is absolutely nothing compassionate or benign about dousing a baby with superconcentrated salt solutions or lethal injections or hacking them to pieces with surgical knives, and there is absolutely nothing compassionate or caring about sucking a baby's brains out with partial-birth abortion. It is child abuse.

Today, Mr. Speaker, because of the gentleman from Wisconsin's (Mr. SENSENBRENNER) and because of the gentleman from Ohio's (Mr. CHABOT) human rights legislation and their courage in proposing it, we can stop some of this violence.

Today, Mr. Speaker, we inform America that a partial-birth abortion is gruesome and includes pulling a living baby feet first out of the womb and into the birth canal, except for the head, and it is there the abortionist jams the baby's head with the scissors for the purposes of creating a hole in the back of the head. Then that baby has his or her brains sucked out with a high powered vacuum.

Why is that deed—that act, compassionate? I say to my colleagues, and you can snicker and laugh all you want. It is violence against children. It is violence and you my colleagues are sanctioning it, and only because of this legislation do we have an opportunity to save at least some of these children from this terrible, horrific ''procedure.''

Mr. Speaker, in 1998 a 6-pound baby girl known as Baby Phoenix was born with a skull fracture and lacerations on her face after the abortionist, Dr. John Biskind, unsuccessfully attempted to perform a partial birth abortion on her 17-year-old mother. Baby Phoenix survived that murder attempt. There was a lot of controversy abut that abortion and do my colleagues know what the controversy was about? That the abortionist miscalculated the baby's age rather than

the horrific, horrible violence that was visited upon that baby. That baby survives but carries those scars. Let us be reminded of Baby Phoenix—the lucky one who survived—and all those others who did not.

This is human rights legislation. I have been in Congress 22 years. I do a lot to combat torture. I chair the Commission for Security and Cooperation in Europe. I have written two torture victims relief bills and many other human rights pieces of legislation including a historic antitrafficking law. Partial birth abortion is torture—torture of little baby boys and little baby girls, and I am ashamed of my colleagues who stand up here and call efforts to stop it, an insult to women.

This procedure is an insult and infinitely more to boys and girls who are killed in the womb or partially born. It is an insult and more to the mothers who are the co-victims. I urge my colleagues to vote yes and against the motion to recommit.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. JEFF MILLER).

Mr. JEFF MILLER of Florida. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I rise today also in support of the partial-birth abortion ban of 2002. We have been accused of being political with this piece of legislation. We have been told that this is an infringement on women's rights, and I will tell my colleagues that what this is is an infringement on a person's right who is too young to speak, certainly too young to vote.

I believe the life of the unborn child begins at conception, and I do believe that every time an abortion occurs, a life is lost. Each year over a million babies are slain at the hands of doctors performing abortions. Some doctors willingly and routinely kill babies during the second and sometimes third trimester.

We have already heard that this is an excruciatingly painful procedure where the doctor violently manipulates the baby's position, creating a breech delivery, and then mercilessly stabs through the child's skull to remove the baby's brain with a vacuum. This procedure is appalling and disturbing, and I feel it is nothing short of murder.

In response to the Supreme Court's split decision in the Stenberg-Carhart ruling, this will help give clear guidelines to what is considered constitutional and prohibited.

Mr. NADLER. Mr. Speaker, I yield myself the remaining time.

Let me summarize this bill first on the substance. This bill is really simply an attack on the very idea of the woman's right to choose to have an abortion, a right guaranteed by the Constitution of the United States. It is an appeal to people's emotions, using falsehoods and false claims.

Let me remind my colleagues of several facts. One, there are no abortions in this country in the last trimester of pregnancy except to save the life, the health of the mother, because that would be illegal.

Two, the gentleman says that the procedures outlined in this bill are never necessary to save the health of the mother, but I would point out that the American College of Obstetricians and Gynecologists, the American Nurses Association, the American Medical Women's Association in an amicus curiae brief to the Court, cited approval by the Supreme Court, concluded ''especially for women with particular health conditions, there is medical evidence that D&X procedures may be safer than available alternatives.'' The political posturing of Congress is no substitute for the medical expertise of doctors.

The distinguished chairman said there was a moral consensus against this procedure, but the fact is when put before the voters in referenda in Colorado, Maine and Washington State, voters rejected bans very similar to this bill. What moral consensus?

The Supreme Court has very clearly told us that this bill is unconstitutional because despite the rhetoric that this is a late-term abortion bill to save fully formed fetuses, the fact is that it bans abortions well before viability, and the Supreme Court in Carhart said, ''Even if the statute's basic aim is to ban the D&X procedure, its language makes clear that it also covers a much broader category of procedures and therefore imposes an unconstitutional burden on women.''

The health of the mother. The Supreme Court has told us that for such a bill to be constitutional, it must have an exception for the health of the mother, and what human being would not want to have an exception for the health of the mother? So we destroy her health for an ideological reason?

The findings of the bill that such procedures are never relevant, are never necessary for health are political findings, not medical findings, as we have noted above, and would be disregarded by the Supreme Court, as the Court has told us in the most recent cases.

By its own terms, because lacking a health exception, this bill would sanction grievous bodily harm to a woman rather than let her and her doctor do what is necessary in their judgment to safeguard her health and her welfare.

Finally, Mr. Speaker, this bill is a sham. Because it is unconstitutional, because it is clearly and facially unconstitutional, it can do nothing to avert any of the horrors cited by the gentleman from New Jersey (Mr. SMITH) and by other supporters of the bill. If the supporters wanted, we could enact a bill that would ban late-term abortions with an exception for where the life and health of the mother is at risk. Such a bill would be constitutional and might accomplish something.

It would not be clearly disingenuous and hypocritical, but the sponsors of this bill do not want to do that. They prefer a sham bill.

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They prefer posturing. Instead of doing something, they would rather have a lot of emotion against a woman's right to choose. But make no mistake, this bill is a sham. It would do nothing. It is unconstitutional.

We should vote against this bill. It is an insult to American women, and it is an insult to our collective intelligence.

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

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

Mr. Speaker, this is an important debate. It is an important debate because it puts before Congress and, thus, the American people whether or not there should be a line drawn and whether there should be any meaningful and effective restrictions on abortion.

The partial-birth abortion procedure is barbaric and grotesque, and most medical societies, including those that generally oppose restrictions on physicians being able to practice any type of medicine, have said that there are other types of abortion procedures that would be more proper than a partial-birth abortion.

Let me quote from the committee report. It says, ''The absence of any basis upon which to conclude that partial-birth abortions are safe has not gone unnoticed by the American Medical Association, which has stated that partial-birth abortion is 'not an accepted medical practice,'" not an accepted medical practice, and that ''it has never been subjected to even a minimal amount of the normal medical practice development; that the relative advantages and disadvantages of the procedure and specific circumstances remain unknown.'' The AMA says it is an experimental procedure and that there is no consensus among obstetricians about its use.

The AMA has further noted that ''Partial-birth abortion is broadly disfavored by both medical experts and the public, is ethically wrong,'' and I repeat, is ethically wrong, ''and is never the only appropriate procedure.'' Thus, a select panel convened by the AMA could not find any identified circumstance where the partial-birth abortion was the only appropriate alternative.

So, if my colleagues want to do away with partial-birth abortions but are talking about a woman's right to choose, there are other alternatives, according to the AMA.

Now, I grant that the AMA does not support the criminal sanctions that are contained in this bill against physicians who perform partial-birth abortions in violation of the law, but they still condemn the partial-birth abortion procedure in their statements that they issued several years ago when Congress first took this issue up.

The American College of Obstetricians and Gynecologists, which is an organization that has consistently opposed legal restrictions on abortions,

including the partial-birth abortion ban, has reported a select panel convened by ACOG could identify no circumstances under which this, meaning the D&X procedure, would be the only option to save the life or preserve the health of the woman.

Now, former Senator Daniel Patrick Moynihan, whom I am sure was very strongly supported politically by my colleague from New York, and who never voted for restrictions on abortion during his long and distinguished career in the other body, said that partial-birth abortion is very close to infanticide. I would strike very close. It is infanticide, because the difference between a legal partial-birth abortion and first degree murder is three inches. Three inches. The size of the head, which has not been delivered, where the scissors are inserted into the back of the baby's head and the brains are sucked out. This is what we want to ban. And this, I think, is supported by the vast majority of the American people.

Now, we have also heard a lot from people who are opposed to this legislation; that this always should be something that is in the professional opinion of a physician. Well, many of the physicians whose professional opinion is requested have an inherent conflict of interest because they will charge a fee and make money by saying that this is a proper procedure, even though the vast majority of their colleagues say it is never a proper procedure and other alternatives are available.

Finally, we have heard a lot about the Stenberg decision. This is a different bill than the law from the Nebraska case that was struck down by the Supreme Court. It contains extensive findings by the Congress of the United States, which is our right as a legislative body to make. It is up to the court to determine whether or not the findings that are made by the Congress are valid when it considers the constitutionality of this bill, should it be enacted into law, just like it was in the province of the court to consider the findings of the district court when it struck down the Nebraska law in the Stenberg decision.

The doctrine of separation of powers gives us the right to make those findings. Those findings are all medically supported by the testimony that the Committee on the Judiciary has received since 1995.

I believe this bill is constitutional. I believe this bill is good public policy. But, most importantly, I believe it is our right and our duty to stop this grotesque procedure, which is three inches away from infanticide.

Ms. McCARTHY of Missouri. Mr. Speaker, I rise in opposition to H.R. 4965, the Late Term Abortion Ban Act. In 2002, the U.S. Supreme Court held, by a 5–4 decision, in Stenberg v. Carhart that a Nebraska law prohibiting later term abortions was unconstitutional. The Court's decision makes clear that federal legislation addressing this issue must include exceptions to protect the life and health of the mother. H.R. 4965 ignores this health exception clearly outlined by the Supreme Court.

I am a cosponsor of House Resolution 2702, the Late Term Abortion Restriction Act. This legislation would prohibit all abortions after fetal viability unless it is in the judgment of the attending physician it is necessary to preserve the life or health of the mother. The Supreme Court concluded in Stenberg v. Carhart that a woman's health must remain the physician's primary concern and that a physician must be given the discretion to determine the best course of treatment to protect women's lives and health. H.R. 2702 will pass constitutional scrutiny. In addition, this measure addresses the termination of viable fetuses in the late stages of pregnancy.

Mr. Speaker, it is unfortunate that we are debating a bill ruled unconstitutional by the United States Supreme Court. Instead, we should be debating and voting on H.R. 2702, a bipartisan measure to ban all late term abortions except ''to preserve the life of the woman or to avert serious adverse health consequences to the woman.''

Mr. Tiahrt. Mr. Speaker, I rise today in strong support of H.R. 4965, the Partial-Birth Abortion Ban Act. Regardless of whether one is pro-life or for abortion rights, the partial-birth abortion procedure is clearly morally indefensible. While every abortion sadly takes a life, a partial-birth abortion takes a baby's life as he/she emerges from the mother's womb and while the baby is still in the birth canal. My fellow colleagues have described the horrific process with pictures that make one sick to his stomach. It is unfathomable that someone could do this to another human being, especially a helpless baby.

Specialists who perform the partial-birth abortion have testified there is no medically-accepted use for the partial-birth procedure, and that, in fact the procedure itself presents health risks for the mother.

There is talk of including a provision to allow for exceptions when the ''mental health'' of the mother is at risk. This is a phony ban. My home state of Kansas passed such a bill, which has essentially meant that partial-birth abortions are banned unless a woman wants one. I am ashamed to report that in Wichita, the infamous late-term abortionist George Tiller performed 182 partial-birth abortions in 1999 alone under this weak law. That is 182 viable babies who were brutally murdered. We cannot allow that to happen.

Congress has passed a partial-birth abortion ban twice, which President Clinton vetoed both times—over the wishes of the American people. President Bush strongly supports H.R. 4965 and is looking forward to signing a partial-birth abortion ban. 70% of Americans believe that partial-birth abortions should be banned. This body that is expressly the ''people's House'' needs to listen to the will of the people.

As a father of three beautiful children and a strong defender of human life, I am embarrassed that our wonderful country permits partial-birth abortions. I urge you to vote in favor of this important legislation so that all the beautiful children who come into this world are treated as the human beings they are.

Mr. PAUL. Mr. Speaker, like many Americans, I am greatly concerned about abortion. Abortion on demand is no doubt the most serious social-political problem of our age. The lack of respect for life that permits abortion significantly contributes to our violent culture and our careless attitude toward liberty.

Whether a civilized society treats human life with dignity or contempt determines the outcome of that civilization. Reaffirming the importance of the sanctity of life is crucial for the continuation of a civilized society. There is already strong evidence that we are indeed on the slippery slope toward euthanasia and human experimentation. Although the real problem lies within the hearts and minds of the people, the legal problems of protecting life stem from the ill-advised Roe v. Wade ruling, a ruling that constitutionally should never have occurred.

The best solution, of course, is not now available to us. That would be a Supreme Court that recognizes that for all criminal laws, the several states retain jurisdiction. Something that Congress can do is remove the issue from the jurisdiction of the lower federal courts, so that states can deal with the problems surrounding abortion, thus helping to reverse some of the impact of Roe v. Wade.

Unfortunately, H.R. 4965 takes a different approach, one that is not only constitutionally flawed, but flawed in principle, as well. Though I will vote to ban the horrible partial-birth abortion procedure, I fear that the language and reasoning used in this bill do not further the pro-life cause, but rather cement fallacious principles into both our culture and legal system.

For example, 14G in the ''Findings'' section of this bill states, ''. . . such a prohibition [upon the partial-birth abortion procedure] will draw a bright line that clearly distinguishes abortion and infanticide . . .'' The question I wish to pose in response is this: Is not the fact that life begins at conception the main tenet of the pro-life community? By stating that we are drawing a ''bright line'' between abortion and infanticide, I fear that we are simply reinforcing the dangerous idea underlying Roe v. Wade, which is the belief that we as human beings can determine which members of the human family are ''expendable,'' and which are not.

The belief that we as a society can decide which persons are ''expendable,'' leads us directly down a slippery slope of violence and apathy toward humanity. Though many decry such ethicists as Peter Singer of Princeton, who advocates the ''right'' of parents to choose infanticide, as well as euthanasia, his reasoning is simply a logical extension of the ethic underlying Roe v. Wade, which is that if certain people are not ''useful'' or ''convenient,'' they should be done away with.

H.R. 4965 also depends heavily upon a ''distinction'' made by the Court in both Roe v. Wade and Planned Parenthood v. Casey, which established that a child within the womb is not protected under law, but one outside of the womb is. By depending upon this false and illogical ''distinction,'' I fear that H.R. 4965, as I stated before, ingrains the principles of Roe v. Wade into our justice system, rather than refutes them as it should.

Despite its severe flaws, the bill nonetheless has the possibility of saving innocent human life, and should therefore be supported. I fear, though, that when the pro-life community uses the arguments of the opposing side to advance its agenda, it does more harm than good.

I wish to conclude with a quote from Mother Theresa, who gave a beautiful and powerful speech about abortion on February 3, 1994, at

the National Prayer Breakfast in Washington DC: ''. . . From here, a sign of care for the weakest of the weak—the unborn child—must go out to the world. If you (in the United States) become a burning light of justice and peace in the world, then really you will be true to what the founders of this country stood for . . .''

May we see bills in the future that stay true to the solid principles the founders of this country stood for, rather than waver and compromise these principles.

Mr. BARCIA. Mr. Speaker, I rise in support of H.R. 4965, the Partial-Birth Abortion Ban Act of 2002 and I urge my colleagues to vote in favor of this important legislation.

I am proud to serve as Co-Chair of the Pro-Life Caucus along with Representative CHRIS SMITH. Representative CHRIS SMITH's courageous leadership in legislative efforts to boldly and consistently protect the un-born is unparalleled. It has been a pleasure to share this important Chairmanship with him.

And as the lead Democratic sponsor of H.R. 4965 I also want to thank Representative CHABOT for his steadfast leadership on this and so many other important pro-life issues.

Partial-birth abortions are most often performed in the second or third trimester and I am particularly troubled by the horrifying aspects of late term abortions because there is no doubt that the partial-birth abortion procedure inflicts terrible pain upon the baby being killed.

H.R. 4965 not only bans this type of atrocious procedure but imposes fines and a maximum of two years imprisonment for any person who administers a partial-birth abortion. This gruesome and brutal procedure should not be permitted.

I strongly believe in the sanctity of life and if 80 percent of abortions are elective, we must reconsider and re-evaluate the value society places on human life. In many cases, this is a cold, calculated, and selfish decision.

This is not a choice issue. This is a life and death issue for an innocent child. It is long overdue that this heinous procedure is made illegal.

Although I am a Pro-Life Democrat, I am grateful that we now have a Pro-Life President who will sign this critical piece of legislation into law. The President's support will abrogate the need for a two-thirds vote in the Senate—which has proven impossible to attain.

The prospects for making the Partial-Birth Abortion Ban Act the law of the land have improved greatly. Please vote to end this horrific procedure once and for all.

Ms. HARMAN. Mr. Speaker, as we consider H.R. 4965, the Late Term Abortion Ban Act, I would like to clarify what this debate is really about.

We are not debating so-called ''partial-birth'' abortion.

We are not debating late-term abortion.

We are debating a broad and unconstitutional attack on a woman's fundamental right to protect her life and health, our right to make our own decisions—our right to choose whether or not to have an abortion.

The Supreme Court has repeatedly ruled not simply that women have the right to an abortion, but that we have the right to the safest abortion procedure available.

States and Congress cannot place an undue burden on a women's right to choose, and cannot endanger the life or health of a woman seeking an abortion.

This bill fails on both counts. Its overbroad definition of ''late term'' abortion could include some of the most commonly used medical procedures for abortion in the second trimester—making it difficult for a woman to get an abortion. Its denial of an exception to preserve the health of a woman is dangerous. Ample evidence exists that the procedures described by my colleagues may be the safest for women with certain health conditions.

If the sponsors of this bill wanted to ban one medical procedure, why didn't they use medical terms to describe it?

If they wanted to ban post-viability abortions, why didn't they include a time limit in their bill?

I can only conclude that this bill is intended—just as the Nebraska law struck down by the Supreme Court was—to ban some of the most common abortion procedures used, even before a fetus is viable.

This bill is unconstitutional and it is harmful to women's health. Let's keep medical decisions where they belong—in the doctor's office, not the House floor.

Vote no on H.R. 4965.

Mr. VITTER. Mr. Speaker, I rise today with strong unequivocal support for H.R. 4965, the Partial-Birth Abortion Ban. Passage of this act into law is long overdue, and I hope the American people—who overwhelmingly want this ban enacted—will get their victory in this House today and in this Congress. Time and a gain we hear the myths and propaganda that this barbaric procedure is necessary to somehow protect women. But what do doctors and experts have to say about the procedure?

The head of National Coalition of Abortion Providers in 1997 said that the ''vast majority'' of partial-birth abortions are performed on healthy babies and healthy mothers.

The American Medical Association, regarding legislation to ban partial-birth abortions, wrote ''Thank you for the opportunity to work with you towards restricting a procedure we all agree is not good medicine.''

The Physicians' Ad Hoc Coalition for the Truth (PHACT) stated, ''Never is the partial-birth procedure medically indicated. Rather such infants are regularly and safely delivered live . . . with no threat to the mother's health or fertility.''

Lastly, former Surgeon General C. Everett Koop issued a statement that not only is the procedure never medically necessary for mother or child but ''on the contrary, this procedure can pose a significant threat to both.''

We also know now that the infant feels tremendous pain, contrary to prior statements by pro-abortion groups. Yet these same organizations would have us believe that this grisly procedure is actually necessary—this same procedure where an infant, in the late second or third trimester, is removed from the mother's uterus save only his or her head, and then an abortionist pierces the skull and vacuums the brain, collapsing the skull.

Allowing any procedure as gruesome as this is simply unacceptable to me, and should be so for this Congress. The American people have spoken loudly and clearly on this issue. This ban has passed the House of Representatives in the past, and we should do so here again today. This legislation before us is carefully crafted to address concerns of the Supreme Court. President Bush has indicated that he will sign this much-needed legislation.

I urge my colleagues to support passage of the Partial-Birth Abortion Ban, and let's hope that it's the last time we have to fight for this common sense legislation.

Mr. TERRY. Mr. Speaker, I rise in support of H.R. 4965, the Partial-Birth Abortion Ban Act.

Two years ago, the Supreme Court ruled 5 to 4 that my home state of Nebraska's ban of this grisly procedure was unconstitutional. Justice Scalia wrote in his dissent that ''the notion that the Constitution prohibits the States from simply banning this visibly brutal means of eliminating our half-born posterity is quite simply absurd.'' He further noted that even ''the most clinical description of [a partial-birth abortion] evokes a shudder of revulsion.''

H.R. 4965 contains several provisions to address the Court's concerns. A partial-birth abortion is more clearly defined to distinguish it from the ''dilation and evacuation'' procedure used to end early-term pregnancies. The bill also contains extensive Findings of Fact based on years of Congressional hearings and testimony. They prove beyond a shadow of a doubt that partial-birth abortion is unrecognized by the mainstream medical community, never necessary to preserve the health of the mother, and may in fact harm her health.

I sincerely hope these changes will withstand the scrutiny of the Court. I urge my colleagues to join me in voting to end the barbarism of partial-birth abortion once and for all and protect children who are just inches away from taking their first breath.

Mr. CRANE. Mr. Speaker, as a cosponsor of H.R. 4965, I rise in strong support of the Partial-Birth Abortion Ban Act of 2002. By passing this legislation we will once again take a step towards banning the truly horrifying practice whereby an innocent life is taken in the most gruesome of procedures.

Used in second and third trimester abortions, the ''partial-birth'' procedure involves pulling some portion of the fetus into the birth canal, crushing the skull and killing the fetus, before removing the fetus from the mother's body.

Congress passed legislation in each of the last three Congresses banning partial-birth abortions. In the 104th and 105th Congresses, President Clinton vetoed the partial-birth abortion bans. Both times the House voted to override the veto, but the Senate sustained it.

This bill makes it a federal crime for a physician, in or affecting interstate commerce, to perform a so-called partial birth abortion, unless it is necessary to save the life of the mother. Under this legislation, anyone who knowingly performs a partial-birth abortion would be subject to fines and up to two years in prison. The bill provides that a defendant could seek a hearing before the state medical board on whether his or her conduct was necessary to save the life of the mother and those findings may be admissible at trial.

Mr. Speaker, I urge my colleagues to vote in favor of this very important legislation. By passing H.R. 4965 today, we will take a giant step towards protecting innocent babies who, through no fault of their own, never have a chance.

Mr. GEPHARDT. Mr. Speaker, it is regrettable that today the Republican leadership ignored an opportunity to resolve the issue of late-term abortion in an effective and constitutional way, moving forward yet again with a ban that does not include an exception to protect the health of the woman. The Supreme Court has spoken on this matter. Banning this

procedure without such an exception is unconstitutional. Repeatedly on the Floor of this House an alternative that contains this crucial exception has been offered, and repeatedly I have voted for it. That a ban would be before us today without that exception can only mean that the Republican leadership wants a political issue more than an effective law. I would hope that any future consideration of this legislation would not suffer from such a flaw.

Mr. SIMMONS. Mr. Speaker, I rise today in opposition of H.R. 4965, the ''Partial-Birth Abortion Ban of 2002.''

Since Congress last voted on this issue two year ago, the U.S. Supreme Court, by a 5–4 vote, found that the Nebraska law making it a crime to perform so-called ''partial birth abortions'' was unconstitutional because it imposed an undue burden on women's decision to end a pregnancy and it lacked the constitutionally required exception to protect women's health.

In spite of the U.S. Supreme Court's rulings, the ''Partial-Birth Abortion Ban of 2002'' fails to include heath exceptions for women and imposes an undue burden on a woman's ability to choose an abortion procedure.

The difficult and personal medical decisions made by a woman, her families and her medical doctors should not be influenced by the agendas of politicians. A free people must assume responsibility to make vital decisions involving them; and not allow their decisions to be made by the federal government.

While I remain concerned about the number of abortions in America today, I continue to fully support the U.S. Supreme Court decision. I will also continue to strongly support programs that can reduce the number of abortions worldwide. These include domestic and international family planning programs, age-appropriate education programs and increased availability of adoptive services.

Mr. SOUDER. Mr. Speaker, as a cosponsor of H.R. 4965, the Partial-Birth Abortion Ban Act, I believe the Congress must act now to pass this important bill. We should not allow the heinous killing of a partially delivered baby to be lawful any longer.

In a partial-birth abortion, the abortionist pulls a living baby feet-first out of the womb and into the birth canal, except for the head, which the abortionist purposely keeps lodged just inside the cervix. The abortionist then punctures the base of the skull with a surgical instrument, such as a long surgical scissors or a pointed hollow metal tube called a trochar. He or she then inserts a catheter into the wound and removes the baby's brain with a powerful suction machine. This causes the skull to collapse, after which the abortionist completes the delivery of the now-dead baby.

H.R. 4965 would ban performance of this abhorrent procedure except if it were necessary to save a mother's life. It defines partial-birth abortion as an abortion in which ''the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside of the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the naval is outside the body of the mother,'' and then kills the baby. The bill would permit use of the procedure if ''necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself.''

According to Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, partial-birth abortions are performed 3,000 to 5,000 times annually, usually in the fifth and sixth months of pregnancy, on healthy babies of healthy mothers. It has also been used to perform abortions as late as in the third trimester, which is the seventh month and later. Many of these babies are old enough to live, and many of them are developed enough to feel the pain of this horrendous procedure.

The Congress has voted to ban partial-birth abortions twice, only for the ban to be vetoed both times. We must pass H.R. 4695 now to ensure that partially delivered babies are protected and that the awful procedure used to perform partial-birth abortions is banned under law.

Mr. WELDON of Florida. Mr. Speaker, as a physician, I find the practice of partial-birth abortion extremely disturbing. This is a gruesome practice where the abortionist delivers the entire child except the head. The head is left in the mother's womb until the abortionist kills the child by puncturing the back of the child's neck. If the baby's head were three inches further out of the birth canal, this practice would be recognized as murder under our court system.

''Critics of a partial-birth abortion ban have asserted that the ban could endanger the life and/or health of the mother, but such is not the case. Even the American Medical Association has said that the partial-birth abortion procedure is 'not good medicine' and is 'not medically indicated' in any situation.

''Congress has approved legislation to ban partial-birth abortions in the 104th, 105th, and the 106th Congresses with support by scores of Members who have never voted pro-life. Even many abortion supporters find this practice reprehensible.

''President Bush has said that he would sign a bill banning this practice. My hope is that the 107th Congress will give the President the Partial-Birth Abortion Ban Act of 2002 for him to do just that. I'm hopeful that we will soon see progress in ending this gruesome practice. I urge my colleagues to do the right thing today and vote for this ban.''

Mr. BLUMENAUER. Mr. Speaker, I oppose the bill before us today, H.R. 4965, which would ban late-term abortions. Congress has no business substituting its judgment for families in cases that may jeopardize not just the health, but the life of the mother, and a family's ability to have a healthy child in the future. I have consistently opposed efforts by politicians in Congress to play politics with the most difficult and personal decisions a family can face.

Access to this procedure helps ensure a woman's health and her constitutional rights. It is the safest and most commonly used type of abortion in the second trimester of pregnancy. In fact, the American College of Obstetricians and Gynecologists has recognized that it ''may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman.''

Today's bill also fails to address a ruling in June 2000 by the U.S. Supreme Court, which struck down a Nebraska ban on late-term abortions in the case Stenberg v. Carhart. The Court invalidated the Nebraska law because it did not contain an exception to protect a woman's health, and it placed an ''undue burden'' on a woman's right to choose. Now, two years later, the House of Representatives is once again moving forward with a similar unconstitutional ban. The only substantive change in today's bill is the addition of a lengthy ''findings'' section that does not correct the blatant constitutional defects.

The timing of this debate and procedures used to bring it to the floor suggest that the anti-choice House Republican leadership is playing anti-abortion politics rather than having a serious legislative discussion. I disagree with the unfair closed rule that the Republican Leadership has set for debate on this bill because it denies pro-choice lawmakers the opportunity to offer amendments or substitute legislation to address the constitutional defects of the legislation.

Not everyone would make the same decision when faced with the wrenching decision of choosing between this procedure and the life of a loved one, but it is wrong for Congress to make that choice for American families.

I urge my colleagues to vote against the unfair rule and the underlying bill.

Mr. SHUSTER. Mr. Speaker, I rise today in support of H.R. 4965, the Partial-Birth Abortion Ban Act of 2002. This legislation would ban a gruesome procedure that kills a child who is just inches from birth. I will not go into the details of this cruel procedure. What I will mention, however, is that numerous medical experts have testified that fetuses are able to fully feel pain after 20 weeks of development, the time at which most partial birth abortion procedures occur.

Some have questioned the constitutionality of partial-birth abortion bans. This legislation, however, clearly addresses questions that have surrounded previous bans in two key ways. First, H.R. 4965 narrowly defines what constitutes a partial-birth abortion. Second, this legislation deals with the question of health exemptions. H.R. 4965 presents extensive Congressional findings, based on the testimony of experts, that partial-birth abortions are never needed to save the life of the mother and that they often pose serious health risks to women.

Mr. Speaker, the American Medical Association has concluded that partial-birth abortions are ''not an accepted medical practice.'' Yet, this cruel practice continues to take place. Congress has twice passed legislation to ban partial-birth abortions. Unfortunately, both times the legislation was vetoed by President Clinton.

The time for Congress to act on this issue is here. President Bush has said that he would sign a ban on partial-birth abortions. Mr. Speaker, we finally have an opportunity to put in place a ban that protects the most innocent of our society—I urge passage of the Partial-Birth Abortion Ban Act of 2002.

Mr. McDERMOTT. Mr. Speaker, as a physician I must stand against H.R. 4965.

This bill bans a legitimate medical procedure and jeopardizes the lives of thousands of childbearing women. Supporters of H.R. 4965 claim to ban only a certain kind of abortion procedure that they happen to find offensive. However, the language of the bill is purposefully vague and would ban multiple types of abortion procedures. Further, this bill fails to provide a viability line for the fetus, so certain abortions that occur during the first two trimesters would be prohibited.

In 2000, the Supreme Court ruled on Carhart v. Stenberg. It decided that any ban on so-called ''partial birth abortions'' must contain an exception for the mother's health. But this bill does not provide any exception to protect the health of the mother.

This is the fifth time in seven years that the Congress has considered this legislation. H.R. 4965 is merely used as a political instrument to inflame the abortion debate through heated and graphic rhetoric. Republican leadership has brought this bill before the House in an effort to grossly mischaracterize abortions in this country.

Mr. Speaker, I can tell that it must be the silly season again, because this bill is about nothing other than election-year politics.

Several reputable medical organizations including the American College of Obstetricians and Gynecologists, and the American Medical Women's Association oppose this ban. Even the American Medical Association has withdrawn their support. We should not be interfering with the very personal, ethical, and medical decisions made between a patient and a doctor.

The Supreme Court specifically recognizes a woman's right to choose a safe abortion under the principles of Roe v. Wade and I will not support any bill designed to erode that fundamental right.

Mr. CHAMBLISS. Mr. Speaker, we have an opportunity today in the House of Representatives to pass H.R. 4965, the Partial-Birth Abortion Ban Act of 2002. This legislation will outlaw the deplorable procedure known as partial-birth abortion.

This issue is important to my state of Georgia, where in 1997, then Governor Zell Miller signed the ban on partial birth abortion into state law. This body has garnered nearly 300 supporters for each of the four separate times we have had the opportunity to cast votes on this important matter.

The American Medical Association concludes that partial-birth abortion is ''not an accepted medical practice,'' while a wealth of other medical research shows this procedure is never medically necessary.

This is not a partisan issue, Senator Daniel Patrick Moynihan the retired Democratic Senator from the State of New York, known for giving voice to the public conscience, compared the procedure to murder by stating, ''It is as close to infanticide as anything I have come upon in our judiciary.'' I agree with Senator Moynihan, partial-birth abortion is brutal and ruthless and must be banned. It is a disgrace that this reckless disregard for innocent young life is permitted here in United States of America.

I urge my colleagues to vote in favor of H.R. 4965 and I remain hopeful that we will be able to outlaw this despicable procedure once and for all.

Mr. STARK. Mr. Speaker, I rise in strong opposition to H.R. 4965, ''The Partial Birth Abortion Ban.''

Today's debate on this issue is offensive. It's an insult to millions of women in this country and political grandstanding at its worst. For each of the past three sessions of Congress, the House has debated and passed this bill. It has never become law. The Supreme Court has already ruled this type of ban to be unconstitutional having struck down an almost identical Nebraska law.

The truth is ''partial birth abortion'' is a political term, not a medical one. Republicans have included a fuzzy definition in this bill that could take away protected representative freedoms. At best, they would ban what is almost always an emergency procedure performed to protect the health of a mother.

This is highly personal decision—and an emotionally difficult one—that is best left to a woman and her doctor. Congress shouldn't tie the hands of physicians by making it illegal for them to make sound medical decisions that could save their patient's life. This should not be a political issue!

We ought to be respectful of the deeply personal tragedies involved. Instead, Republicans exploit them for political purposes. They jubilantly jump on this issue like it's a new Tonka truck at Christmas, when they ought to consider what this experience is like for the women involved. They ought to think about the real facts, not just the extreme rhetoric and gory pictures on the latest Christian Coalition voting card.

Most of the women involved are expectant mothers that encounter medical difficulties near the end of their pregnancy and must undergo this painful, but safe procedure to save their life. Others are the victims of sexual assault who often don't come to terms with their pregnancy until well into the second trimester. Imagine the painful process of determining whether you will bear the child of someone who has raped and assaulted you. These women have a right to make this choice. This bill provides no exemption for this basic freedom.

Indeed, this bill is yet another deceptive hoax in a protracted assault against the rights of women and all Americans. We must never let the right to choose be taken away just as we must never allow another back alley abortion to ever take place in this country again. I urge my colleagues to stand up for the freedom to choose and vote no on this cynical and senseless bill.

Mr. UPTON. Mr. Speaker, I rise today as a cosponsor of the Partial Birth Abortion Ban Act. I urge colleagues to join me in voting decisively in support of this legislation, as we have in the past two Congresses. As a civilized society founded on respect for life, we cannot allow this cruel and dehumanizing procedure to continue.

In these abortions, healthy infants who could survive are brutally killed just a breath away from birth. Although the consensus in the medical community is that this procedure is never necessary to save the life of the mother, this bill does include that exception to the ban.

On many issues that we debate in this body, there are shades of gray and room for honest disagreements on principle and substance. But on this issue, there is no question. There are no shades of gray. Partial birth abortions are acts of evil, pure and simple. They turn the wonder, the miracle, of the birth of a human being into a terrible travesty of horrible death and suffering.

Yesterday, the President and Mrs. Bush announced an adoption initiative to extend the welcome of family to a vulnerable child. Isn't it sadly ironic that we are here today, actually arguing about banning a procedure that dashes the hopes of childless couples for an infant to love and nurture.

The greatness of nation is judged not only by the size of its armies or the strength of its economy, but also by the way it treats its most vulnerable and frail. In the name of simple human decency and of our belief in all this nation must stand for, I call on this body to ban this procedure.

Mr. SHOWS. Mr. Speaker, I rise today in support of H.R. 4965, the Partial-Birth Abortion Ban act.

Mr. Speaker, protecting innocent human life is a preeminent concern of mine. I am opposed to abortion and the gruesome partial birth abortion procedure in particular.

I am as strong an advocate as there can be against the killing of unborn children. As Democratic Whip of the Congressional Bipartisan Pro-Life Caucus, I work closely with my colleagues to stress the importance of passing pro-life legislation such as H.R. 4965, which we are considering today.

Abortion is wrong. Partial birth abortion is the cruelest form of torture and we must put an end to it now, today!

Mr. DAVIS of Illinois. Mr. Speaker, I rise today in opposition to H.R. 4965, the Partial Birth Abortion Ban Act. This bill is unconstitutional and will jeopardize the health of women.

This so-called ''partial birth'' abortion ban is part of a political scheme to sensationalize the abortion debate. The truth is that the phrase ''partial birth abortion'' is a political term, not a medical term. ''Partial birth'' abortion bans have never been about banning one procedure, nor about late term abortions. They are deceptively designed to be intentionally vague in the attempt to ban abortion entirely. This bill opens the door for legislators to ban even more safe abortion procedures.

H.R. 4965 is neither designed, nor written to ban only one procedure, and it deliberately lacks any mention of a viability time line, therefore is applicable through out the pregnancy. These bans are deliberately designed to erode the protections of Roe v. Wade. We cannot sit back and watch the reproductive rights of women in America disappear.

This bill bans a variety of safe and common abortion procedures, both before and after viability, therefore imposing an undue burden on women seeking access to abortion services. This abortion restriction would, without exception, force women to use riskier methods of abortion.

But perhaps the strongest argument against this bill is that it ignores a constitutionally required exception to protect women's health. In 2000 the Supreme Court ruled in the Carhart v. Stenberg case that women are entitled to medical procedures that are found safest for their individual health. The Supreme Court stated unequivocally that every abortion restriction must contain a health exception that allows an abortion when ''necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'' Anti-choice lawmakers have ignored this constitutional right, and refused to include into their legislation an exception to protect women's health.

H.R. 4965 unduly interferes with the doctor-patient relationships by giving Congress the ability to punish physician and put patients at risk. The American Medical Association, one the largest and most politically active groups of physicians in the U.S., who in the past has often supported abortion bans, withdrew their support on this bill. The following is a statement that was released by the AMA, ''The physician must retain the discretion to make that judgment, acting within the standards of good medical practice and in the best interest of the patient.''

Along with the American Medical Association many other medical organizations oppose this legislation, including the American Medical Women's Association, American Nurses Association, American Public Health Association, American College of Nurse Practitioners, American Medical Student Association, and the Association of Schools of Public Health, to name only a few. These organizations have recognized that it would endanger women's health and inappropriately interfere with medical decision-making. These groups have implored Congress not to intrude into decisions that are more appropriately made by women and their families, in consultation with their physicians. Their medical judgment should not be ignored.

For the safety and the constitutionally required right of women, I urge you to vote in opposition to H.R. 4965.

Mr. WATTS. Mr. Speaker, I rise in support of the Partial-Birth Abortion Ban Act of 2002.

This is an issue that has opened the eyes of many Americans. The rhetoric of ''choice'' is turned on its head when a procedure as barbaric as partial-birth abortion is the subject.

When the Democrat leadership discussed the schedule of the House here on the Floor last week, it was amazing to hear the term ''partial-birth abortion'' partially uttered, then quickly changed to words softening the reality of the procedure we are debating today. To describe partial-birth abortion as a ''certain late-term abortion,'' as many members of the media also do, is factually incorrect. Partial-birth abortions are performed as early as twenty weeks into the life of an unborn child. The devil is always in the details, which is why you will hardly ever hear the fact that thirty-six percent of all abortions in American are on children of African descent.

Those who oppose a ban on partial-birth abortion often admit the procedure is gruesome, yet defend it because they believe it is necessary when a baby deemed imperfect is about to be born. But we must step back and ask ourselves what authority we have to decide who gets to live and who becomes a casualty of choice. The quality of life of an unborn child or an elderly Americans is just as valuable as the life enjoyed by members of Congress.

Let me propose the following scenario to you.

You are a doctor who has been contacted by a patient—a woman in her early thirties. After you examine her medical history, you discover she suffers from tuberculosis. She is not well. Her husband has syphilis—and it is possible she has also contracted the deadly disease.

This lady previously gave birth to four children, three of whom are still living. One is blind and two are deaf. She asks you about terminating this pregnancy with an abortion. You consider her health, her previous births and the state of her children.

What would do yo do?

Well, if you said, ''have an abortion,'' you just killed Beethoven.

Mister Speaker, all life is precious. All life is sacred. And under the Declaration of Independence of the United States, all Americans are endowed by our Creator and have been given an unalienable right to life.

Partial-birth abortion represents the antithesis of civility. It is an insult to humanity. And an overwhelming majority of Americans think it has no place in our country.

This legislation is practical, warranted and, I believe, constitutional. I urge my colleagues to support the bill so the legalized version of infanticide known as partial-birth abortion will never again take the life of an innocent, precious baby in our great nation.

Mrs. LOWEY. Mr. Speaker, my colleagues, we are here today, considering a ban on so-called ''partial-birth abortions'' for the eighth time in seven years, because the proponents of this bill want to overturn Roe v. Wade.

This ban is not about outlawing one method of abortion—it's about access to safe abortion methods used throughout pregnancy. It's not about post-viability abortion—it's about the right of all women to choose.

It's about Roe v. Wade. And those who support this ban—much as I respect their convictions—do not want Americans to hear that because they know Americans support to right to choose.

Roe v. Wade guaranteed that right to choose by expressing three very important values that make sense and have been widely accepted by the American people.

First, the decision to terminate a pregnancy is private and personal, and should be made by a woman and her family without undue interference from the government. At the earliest point in pregnancy, the government has no place in this process. Therefore, a state cannot ban access to abortion before fetal viability, the point at which a fetus can live outside of the woman.

Second, a woman must never be forced to sacrifice her life or damage her health in order to bring a pregnancy to term. The woman's life and health must come first and be protected throughout pregnancy.

Third, determinations about viability and health risks must be made for each woman by her physician. A blanket government decree on medical determinations is irresponsible, offensive, and dangerous.

Despite the Supreme Court's decision in Stenberg v. Carhart—which confirmed these principles—H.R. 4965 clearly rejects each of these values.

The Court made clear that a ''partial birth abortion'' ban was extreme and dangerous because it limited safe options for women and failed to protect the health of women. Yet the bill before us contains no mention of fetal viability, no protection for the health of the woman, and leaves no role for the physician treating a woman. The government makes all the decisions.

The proponents of the bill may deny it, but their tireless efforts to ban so-called ''partial birth abortions'' is in fact a calculated, nationwide effort to undermine support for Roe v. Wade. Please do not be fooled by today's charade, this is just another attempt to make abortion illegal.

My colleagues, we believe that women matter. We believe their lives are irreplaceable and worth protecting. That is why we oppose this ban.

I urge my colleagues to respect the law of the land by supporting the values in Roe v. Wade and Stenberg v. Carhart—let's leave decisions in the hands of families and protect the health of women. Vote against this terrible harmful bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). Pursuant to House Resolution 498, the bill is considered as having been read for amendment and the previous question is ordered.

The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MS. BALDWIN

Ms. BALDWIN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. BALDWIN. Yes, I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. BALDWIN moves to recommit the bill H.R. 4965 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

In section 3, of the bill, in proposed new section 1531 of title 18, in subsection (a), strike ''that is necessary'' and all that follows through ''itself.'' and insert ''where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.''.

Ms. BALDWIN (during the reading). Mr. Speaker, I ask that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Wisconsin (Ms. BALDWIN) is recognized for 5 minutes in support of her motion.

Ms. BALDWIN. Mr. Speaker, I rise today to offer a motion to recommit with my colleague, the gentlewoman from Texas (Ms. JACKSON-LEE), that would provide an exception in order to protect the health of the mother.

The families that are affected by this bill are dealing with the tragic circumstances of crisis pregnancies. In most cases, they have just learned that their babies will not survive. They are then confronted by choices that none of us would wish upon any human being. This is the context and these are the circumstances under which this legislation comes into play. And any suggestion to the contrary deceives the American public about the realities of this issue.

The experiences that families face with crisis pregnancies are real. Their stories demonstrate the need for this exception to protect the health of the mother. Kathy and Chris, from Wisconsin, were married and were excited when they found out that Kathy was pregnant 6 years ago. They received the best prenatal care for their baby, and the pregnancy seemed to be going fine. She was over 6 months along when they went to their doctor to have an ultrasound and discovered that their baby was developing with no brain. There was a tumor in the baby's brain cavity and other factors that would compromise and jeopardize Kathy's health. Her doctor recommended that she have an abortion.

Imagine the pain of these parents who so much wanted to have this child. Tragically, their doctor could not locate a provider in Wisconsin, so they also had to travel over a thousand miles to Colorado. After extensive tests, the doctor in Colorado determined that this procedure was medically necessary to protect Kathy's health. Because of the stigma associated with this procedure, neither Chris nor Kathy even told their parents that they had to have this procedure. But now she is speaking out because she believes that women must know that when they are faced with an extremely dangerous pregnancy, they deserve the right to protect their own health.

Typically, women who must face this decision want nothing more than to have a child and are devastated to learn that their baby would not survive outside the womb. In consultation with their doctors and families, they make difficult decisions to terminate pregnancies, to preserve their own health, and, in many cases, to preserve their ability to have children in the future.

This was the case for Kathy and Chris, who, because they took steps to terminate her first pregnancy, now have a beautiful 4-year-old son, Frederic. How can we look a woman like Kathy in the eye and tell her that she cannot have a safe procedure that would preserve her health and give her the best chance to have children in the future? Our compassion alone should be sufficient to justify a health exemption.

But if my colleagues need more ammunition, the U.S. Supreme Court has made it clear that such an exemption is constitutionally required. In Stenberg v. Carhart, the court, in striking down a Nebraska statute, held that it was unconstitutional because there was no health exception for the mother. The language in this motion is taken directly from that Supreme Court's ruling.

My colleagues, denying a maternal health exemption is wrong and it is unconstitutional. If this bill passes today without the adoption of this motion, women who are already dealing with the tragic consequences of a crisis pregnancy will have their health put in serious danger.

I urge Members to support this motion to recommit on behalf of Kathy, on behalf of all which women who have faced this most difficult decision, and on behalf of Frederic and all the children who have been brought into this world because their mothers had access to safe abortions, including this procedure, and were able to have children again.

Vote for this motion to recommit to preserve the life and health of women.

Mr. Speaker, I yield 40 seconds to the gentlewoman from Colorado (Ms. DEGETTE).

Ms. DEGETTE. Mr. Speaker, I would like to, as the cochair of the Congressional Pro-Choice Caucus, I would like to extend my thanks and the thanks of the caucus to the gentlewoman from Wisconsin for bringing this motion to recommit, and also to the gentleman from New York for managing the time on the bill, and the entire Committee on the Judiciary for their tireless work.

Our view is this: Given Stenberg v. Carhart, we need to decide are we going to pass a constitutional bill or not. This motion makes it constitutional. We urge a ''yes'' vote on the motion to recommit.

Ms. BALDWIN. Mr. Speaker, I yield the balance of my time to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I join her in offering this motion to recommit.

Let me simply state that in the State of Texas, where then-Governor Bush, now President Bush, presided, included in the provision of their ban on this procedure was an exemption for the health of the woman. This is all that we are asking for today. This is a medical procedure, and the only time this is done is when it is needed to save the life or the health of the mother.

Let us vote for this motion to recommit in order to be consistent with the Supreme Court decision in Stenberg.

Mr. CHABOT. Mr. Speaker, I rise in opposition to the motion to recommit.

This motion to recommit should be opposed for several reasons. The overwhelming weight of the evidence compiled in a series of congressional hearings indicates that partial-birth abortions are never necessary to preserve the health of a woman and, in fact, pose substantial health risks to women undergoing the procedure.

No controlled studies of partial-birth abortions have been conducted, nor have any comparative studies been conducted to demonstrate its safety and efficacy compared to other abortion methods. There have been no articles published in any peer-reviewed journals that establish that partial-birth abortions are superior in any way to established abortion procedures, nor did the plaintiff in Stenberg v. Carhart, Dr. Leroy Carhart, or the experts who testified on his behalf, identify even a single circumstance during which a partial-birth abortion is necessary to preserve the health of the woman.

In fact, according to Dr. Carhart's own testimony, when he has chosen to perform a partial-birth abortion, he has done so based upon the happenstance of the presentation of the unborn child and not because it was the only procedure that would have preserved the health of the mother.

Dr. Martin Haskell, the physician credited with developing partial-birth abortions, has testified that he has never encountered a situation where a partial-birth abortion was medically necessary to achieve the desired result. Furthermore, leading proponents of the partial-birth abortion acknowledge that it poses additional health risks because, among other things, the procedure requires a high degree of surgical skill to pierce the infant's skill with a sharp instrument in a blind procedure. In other words, they cannot really see what is going on.

Dr. Warren Hearn has testified that he had ''very serious reservations about this procedure,'' and that he ''could not imagine a circumstance in which this procedure would be the safest.''

□ 1815

Although he was opposed to legislation banning partial-birth abortions, he also stated, ''You really cannot defend it. I am not going to tell somebody else that they should not do this procedure. But I am not going to do it.'' He has also stated, ''I would dispute any statement that this is the safest procedure to use.''

The procedure also poses the following additional health risks to the woman: an increase in a woman's risk of suffering from cervical incompetence as a result of a cervical dilation making it difficult or impossible for a woman to successfully carry a subsequent pregnancy to term; an increased risk of uterine rupture, abruption, amniotic fluid embolus, and trauma to the uterus as a result of converting the child and the footling breech position, a procedure which, according to ''Williams Obstetrics,'' a leading obstetrics textbook, ''There are very few, if any, indications for . . . Other than delivery of a second twin''; and a risk of iatrogenic and secondary hemorrhaging due to the doctor blindly forcing a sharp instrument into the base of the unborn child's skull while he or she is lodged in the birth canal, an act which could result in severe bleeding, brings with it the threat of shock and could ultimately result in maternal death. Let me repeat that. Maternal death, mother's death. This also creates a high risk of infection should she suffer a laceration.

Finally, a health exception, no matter how narrowly drafted, gives the abortionist unfettered discretion in determining when a partial-birth abortion may be performed; and abortionists have demonstrated that they can justify any abortion on this ground. Dr. Warren Hearn of Colorado, for example, the author of the standard textbook on abortion procedures, who also performs many third-trimester abortions, has stated: ''I will certify that any pregnancy is a threat to a woman's life and could cause grievous injury to her physical health.'' Let me repeat that: ''I will certify that any pregnancy is a threat to a woman's health and could cause grievous injury to her physical health.''

So it is clear, then, that a law that includes such an exception would not ban a single partial-birth abortion. A partial-birth abortion ban with this so-called health exception is nothing but a sham. It would not prevent any partial-birth abortions at all, and our goal in this is to protect both unborn children and women in this country by

once and for all stopping this horrible procedure.

The SPEAKER pro tempore (Mr. LAHOOD). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

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

RECORDED VOTE

Ms. BALDWIN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and 9 of rule XX, the Chair announces that this 15-minute vote will be followed by a 5-minute vote on passage, if ordered, followed by a 5-minute vote on the motion to suspend the rules and agree to House Current Resolution 188 on which further proceedings were postponed on Monday.

The vote was taken by electronic device, and there were—ayes 187, noes 241, not voting 6, as follows:

[Roll No. 342]

AYES—187

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Bass
Becerra
Bentsen
Berkley
Berman
Biggert
Bishop
Blagojevich
Blumenauer
Boehlert
Boucher
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Clay
Clayton
Clyburn
Conyers
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Dooley
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frelinghuysen
Frost
Gephardt
Gilchrest
Gilman
Gonzalez
Gordon
Green (TX)
Greenwood
Gutierrez
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kelly
Kennedy (RI)
Kilpatrick
Kind (WI)
Kirk
Kleczka
Kolbe
Kucinich
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Moore
Moran (VA)
Morella
Nadler
Napolitano
Neal
Obey
Olver
Ose
Owens
Pallone
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rangel
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Shays
Sherman
Simmons
Slaughter
Smith (WA)
Solis
Spratt
Stark
Strickland
Tanner
Tauscher
Thomas
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—241

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bereuter
Berry
Bilirakis
Blunt
Boehner
Bonilla
Bono
Boozman
Borski
Boswell
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doggett
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Grucci
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kennedy (MN)
Kerns
Kildee
King (NY)
Kingston
LaFalce
LaHood
Lampson
Langevin
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Mascara
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Murtha
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Ortiz
Osborne
Otter
Oxley
Pascrell
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shows
Shuster
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Stenholm
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—6

Bonior
Condit
Knollenberg
Stearns
Traficant
Weldon (PA)

□ 1841

Mrs. WILSON of New Mexico, Mr. PASCRELL, Ms. KAPTUR and Mr. ROSS changed their vote from ''aye'' to ''no.''

Ms. KILPATRICK, Mr. TANNER and Mr. HORN changed their vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LAHOOD). The question is on the passage of the bill.

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

RECORDED VOTE

Mr. SENSENBRENNER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 274, noes 151, answered ''present'' 1, not voting 8, as follows:

[Roll No. 343]

AYES—274

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Bereuter
Berry
Biggert
Bilirakis
Bishop
Blunt
Boehner
Bonilla
Bono
Boozman
Borski
Boswell
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Cooksey
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dingell
Doolittle
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Etheridge
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (WI)
Grucci
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jefferson
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
King (NY)
Kingston
Kleczka
LaFalce
LaHood
Lampson
Langevin
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Maloney (CT)
Manzullo
Mascara
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Moran (VA)
Murtha
Myrick
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Ortiz
Osborne
Ose
Otter
Oxley
Pascrell
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Pryce (OH)
Putnam
Quinn

Radanovich
Rahall
Ramstad
Regula
Rehberg
Reyes
Reynolds
Riley
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Spratt
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Visclosky
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—151

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Becerra
Bentsen
Berkley
Berman
Blagojevich
Blumenauer
Boehlert
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Clay
Clayton
Clyburn
Conyers
Coyne
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Doggett
Dooley
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Filner
Frank
Frost
Gilman
Gonzalez
Green (TX)
Greenwood
Gutierrez
Harman
Hastings (FL)
Hilliard
Hinchey
Hoeffel
Holt
Honda
Hooley
Horn
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (CT)
Johnson, E. B.
Jones (OH)
Kilpatrick
Kind (WI)
Kirk
Kolbe
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Luther
Maloney (NY)
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Moore
Morella
Nadler
Napolitano
Olver
Owens
Pallone
Pastor
Payne
Pelosi
Price (NC)
Rangel
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Simmons
Slaughter
Smith (WA)
Snyder
Solis
Stark
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

ANSWERED ''PRESENT''—1

Kucinich

NOT VOTING—8

Bonior
Condit
Cunningham
Knollenberg
Phelps
Stearns
Traficant
Weldon (PA)

□ 1849

Mr. LEWIS of Georgia changed his vote from ''aye'' to ''no.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. CUNNINGHAM. Mr. Speaker, on rollcall vote 343 concerning partial-birth abortion, I was detained. Had I been present, I would have voted ''aye.''

SENSE OF CONGRESS THAT CHINA SHOULD CEASE PERSECUTION OF FALUN GONG PRACTITIONERS

The SPEAKER pro tempore (Mr. LAHOOD). The unfinished business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 188, as amended.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Florida (Ms. ROS-LEHTINEN) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 188, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 420, nays 0, not voting 14, as follows:

[Roll No. 344]

YEAS—420

Abercrombie
Ackerman
Aderholt
Akin
Allen
Andrews
Armey
Baca
Baird
Baker
Baldacci
Baldwin
Ballenger
Barr
Barrett
Bartlett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Coble
Collins
Combest
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Forbes
Ford
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—14

Bachus
Barcia
Bonior
Condit
Conyers
Dicks
Foley
Gephardt
Issa
Istook
Knollenberg
Stearns
Traficant
Weldon (PA)

□ 1859

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1900

IN THE MATTER OF REPRESENTATIVE JAMES A. TRAFICANT, JR.

Mr. HEFLEY. Mr. Speaker, I call up the privileged resolution (H. Res. 495) in the matter of JAMES A. TRAFICANT, Jr., and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 495

Resolved, That, pursuant to Article I, Section 5, Clause 2 of the United States Constitution, Representative James A. Traficant, Jr., be, and he hereby is, expelled from the House of Representatives.

The SPEAKER. The resolution constitutes a question of the privileges of the House and may be called up at any time.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Before our debate begins, the Chair will make a statement about the decorum expected in the Chamber.

The Chair has often reiterated that Members should refrain from references in debate to the conduct of other sitting Members where such conduct is not the question actually pending before the House, either by way of a report from the Committee on Standards of Official Conduct, or by way of another question of the privileges of the House.

This principle is documented on pages 174 and 703 of the House Rules and Manual and reflects the consistent rulings of the Chair.

It is also well established that indecent language either against the proceedings of the House or cast against its Membership is out of order.

Disciplinary matters, by their very nature, involve personalities. The calling up of a resolution reported by the Committee on Standards of Official Conduct or the offering of a resolution as a similar question of the privileges of the House embarks the House on consideration of a proposition that admits references in debate to a sitting Member's conduct.

This exception to the general rule against engaging in personality, admitting references to a Member's conduct when that conduct is the very question under consideration by the House, is closely limited.

This point was well stated by the Chair on July 31, 1979, as follows: while a wide range of discussion is permitted during debate on a disciplinary resolution, clause 1 of rule XVII still prohibits the use of language which is personally abusive.

This was reiterated by the Chair as recently as January 27, 1997. It also extends to language which is profane, vulgar or obscene and to comportment which constitutes a breach of decorum.

On the question about to be pending before the House, the resolution offered by the gentleman from Colorado (Mr. HEFLEY), as chairman of the Committee on Standards of Official Conduct, Members should confine their remarks in debate to the merits of that precise question.

Members should refrain from remarks that constitute personalities with respect to members of the Committee on Standards of Official Conduct, with respect to other sitting Members whose conduct is not the subject of the pending report, or to Members of the other body.

The Chair asks and expects the cooperation of all Members in maintaining a level of decorum that properly dignifies the proceedings of this House.

As always, the galleries must refrain from any manifestation of approval or disapproval of the proceedings.

Pursuant to clause 4 of rule XVII, the Chair intends to take necessary initiatives to ensure proper decorum.

MOTION OFFERED BY MR. LATOURETTE

Mr. LATOURETTE. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. LATOURETTE moves to postpone further consideration of House Resolution 495 until September 4, 2002.

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Ohio (Mr. LATOURETTE) is recognized for 1 hour.

Mr. LATOURETTE. Mr. Speaker, as a first matter of business, I ask unanimous consent to yield 30 minutes of my time to the gentleman from Colorado (Mr. HEFLEY), the distinguished chairman of the Committee on Standards of Official Conduct, and further ask that he be permitted to yield time from that 30 minutes.

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

There was no objection.

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

Mr. Speaker, my motion to postpone would postpone the proceedings until a date certain, as a matter of fact, the day we would return from recess.

Mr. Speaker, this is a historic moment in the House of Representatives. Not since 1861, nearly 120 years ago, has the House expelled one of its Members. As we consider the resolution of expulsion today, it seems to me that we should do so with all the care and due regard for both this institution and the individual involved. This institution makes the Nation's laws; therefore, we have the obligation to be more concerned with the rule of law and the observance of law than any other institution in America.

Mr. Speaker, I wish I could take credit for those words, but I cannot. Those words were spoken by the Honorable Louis Stokes in 1980, the only other time that the House of Representatives has taken upon this course of action since the American Civil War; and on that particular occasion, which was the expulsion vote of Representative Myers of Pennsylvania, Congressman Stokes rose and made the same motion that I am making here this evening.

I would ask Members to pay attention to the similarities between where we find ourselves today and where the Congress found themselves in 1980, the only other time that this happened in this Congress's history, again, since the Civil War. Representative Myers had been convicted by a jury of a felony, of felonies. Representative TRAFICANT has been convicted by a jury of felonies. Representative Myers was pending sentence and had not been sentenced on the date that the resolution was brought to the floor. Congressman TRAFICANT has not been sentenced by the judge in Ohio. The House considered the resolution against Representative Myers on the last day before Congress left town for a 1-month recess in 1980. Tonight, we are 2 days from a 1-month recess in 2002. Representative Myers was caught on videotape accepting $50,000 from an individual who was dressed up as an Arab sheik; he admitted his conduct before the Committee on Standards of Official Conduct. Congressman TRAFICANT, in his case, there is no videotape, there is no audiotape, there are no fingerprints, and he has denied the allegations.

In this matter, although there were numerous witnesses that testified in the proceeding in Cleveland, Ohio, in Federal court, I would submit to Members, in my opinion, it boils down to a case of direct testimony in conflict. There are, and those of my colleagues that have practiced law know that there is something that we prosecutors used to do called ''putting lipstick on the pig,'' and you would have one witness that was seminal to your case, but you would call on other witnesses to say oh, I went to the bank, or I picked up the newspaper that morning, or I did this or I did that, seemingly to corroborate the main witness's testimony.

I would give an example, because since I have traveled the floor since this matter came about, the one count, although all are serious, and I will tell my colleagues right now, so that there is no confusion about where I come from, that if Congressman TRAFICANT committed these acts, I will vote to expel him, because they are reprehensible.

The most serious example that has been given to me as I have talked to other Members on the floor deals with kickbacks, the allegation that a member of his staff was hired and was required to deposit his congressional paycheck and every month take $2,500 in cash and deliver it to the Congressman.

Over the course of time, and this fellow's name was Sinclair. Over the course of time that this was alleged to have occurred, it would have been $2,500 a month for the months of his employment; it adds up to $32,500. During the same period of time, the government also indicated that Congressman TRAFICANT had received $13,000 in cash bribes from another individual.

That is count 3, not only on the indictment, but also the charges before us this evening.

The government introduced witnesses that said that, in fact, Mr. Sinclair went to his bank, deposited his congressional paycheck and took out $2,500 in cash. Mr. Sinclair also came forward and indicated that he brought some burnt envelopes to the FBI, the Federal Bureau of Investigation and said that Mr. TRAFICANT, after suspicion was cast upon him, brought him the cash back in the burnt envelopes; and that was introduced as evidence as well.

The competing evidence, and why it is conflicting and why it is different than Representative Myers where we have a videotape and audiotape and other matters is that 1,000 documents were submitted to the FBI lab, one of the best in the world, if not the best, and no fingerprints are found on any money, any envelopes, any plastic bags, nothing.

Further, I would tell my colleagues that they looked at Congressman TRAFICANT's bank account as well. Over the same time period, over the 2 years, he had deposits of $7,600. If the government's case is to be believed on that point and, again, we are talking about direct evidence; I am not asking anybody to subscribe to my view of the evidence, but about $40,000 is missing. Now, I would note, and I would ask what we used to ask in the law business, Members of Congress to take judicial notice, we know that that $40,000 was not spent at Brooks Brothers.

We have an issue where Mr. Sinclair says, this is what happened. Congressman TRAFICANT says, it did not. And that creates the backdrop for why I decided to file this motion, the same motion that was introduced by Louis Stokes in 1980.

When this matter came before the Committee on Standards of Official Conduct, and I want to give praise at this moment in time to the gentleman from Colorado (Mr. HEFLEY), the chairman of that committee, who has the toughest job in the House of Representatives, for his work. And I also want to commend the gentleman from California (Mr. BERMAN), the ranking member, not only because he has the second toughest job, but I just want to, just as a personal, point of personal privilege for a minute, when I filed this motion, I was originally told that there may be some who would seek to file a motion to table so we could not even have this discussion this evening. The gentleman from California (Mr. BERMAN) worked very hard to make sure that I had the opportunity to speak tonight and those who wanted to agree with me, and I thank him very much.

This sets the backdrop for what I think brings us here this evening, or at least me here this evening, and it is a fellow by the name of Richard Detore. Richard Detore is an individual who was indicted in a superseding indictment to the Congressman. He did not testify at the trial, because he has fifth amendment concerns. He did come against those concerns to testify before the Committee on Standards of Official Conduct in open session.

He testified, and again, we were free to believe or disbelieve, but that is not the point, and we will get there from here, that he was asked by the assistant United States Attorney to tell a story, and the story was that he was in a room here in the Capitol and he overheard a conversation between a fellow by the name of J.J. Cafaro and another individual wherein it was discussed that Congressman TRAFICANT was being bribed in return for favors, and the specific favor had to do with technology, laser technology for landing airplanes, which most of you voted for if you voted for AIR 21.

Mr. Detore testified to us, and again he did not appear at trial, that when he declined, and he said, I will tell you anything that I do know; he was originally given a grant of immunity: I will tell you anything that I do know, but that is not true, that did not happen. First, he was threatened with the Internal Revenue Service. Next, it was indicated to him that he would be charged with bank fraud. I want my colleagues to listen to the description of bank fraud because this is very telling.

When he got the job with U.S. Aerospace Group, he was promised employment of $240,000 a year. His employer, one of the accusers of the Congressman, gave him a letter saying, you are going to be the new CEO of this company and you are going to make $240,000. He took that letter to the bank to get a mortgage, as I think many of us in this room have done. When the accuser in another count of the Congressman told the story, he said, you know, you can get him, because we never signed his employment agreement. So his using the letter saying we are going to pay him in the future, he did not have a signed employment agreement; he has committed bank fraud.

When he did not believe that, and no reasonable human being would, he said they would indict him. He said, you know what? Indict me. And he stands indicted today.

Since his testimony, again, not seen by the jury, a juror in Cleveland, Ohio, has come forward to the newspaper; and, Mr. Speaker, I will introduce an article for the RECORD appearing in the Cleveland Plain Dealer on July 20 written by an excellent journalist by the name of Sabrina Eaton, and the headline is: ''Traficant juror changes his mind; now convinced conviction was wrong,'' and I will include the article in the RECORD at this time.

TRAFICANT JUROR CHANGES HIS MIND; NOW CONVINCED CONVICTION WAS WRONG

(By Sabrina Eaton and John Caniglia)

WASHINGTON.—A juror who helped convict U.S. Rep. James Traficant says his vote to find the Youngstown congressman guilty of 10 felonies in April was a mistake. He says he changed his mind after watching televised testimony before a House ethics panel this week.

''I know it's after the fact, but now I believe that there's no doubt that the government was out to get him, and if they want you, they'll find enough evidence to make you believe that the Earth is flat,'' said Leo Glaser of Independence, who was juror No. 8 at Traficant's nine-week trial in Cleveland.

Glaser, 54, said he was swayed by the testimony of Richard Detore, a Virginia executive accused of bribing Traficant. Detore, who faces trial in October, chose not to testify in Traficant's trial because he could have hurt his own case. But he did give his version to a House ethics panel that later recommended that Traficant be tossed from his job.

Detore told the panel he hadn't tried to bribe Traficant and that the chief prosecutor in the case against Traficant, Assistant U.S. Attorney Craig Morford, urged him to fabricate a story to say he overheard Traficant seeking favors from Youngstown businessman John J. Cafaro in exchange for political influence. He said his refusal to lie about Traficant resulted in his own indictment.

Morford, who was unable to present his side of the story when Detore testified in Washington, yesterday categorically denied ''any improper conduct'' and said Traficant brought up the same allegations last year in legal motions that were rejected by Judge Lesley Wells. He declined to comment on Glaser's statements.

Under federal law, Glaser's change of heart won't change the verdict against Traficant. Although it's unusual for jurors to change their minds after a trial, Case Western University law professor and political scientist Jonathan Entin said Traficant probably won't succeed if he tries to use Glaser's reversal to appeal the verdict, because Detore voluntary refused to testify in Cleveland.

Madison Republican Rep. Steve LaTourette, a member of the ethics panel that recommended Traficant's expulsion on Thursday, said that Glaser contacted his office several weeks ago to discuss the case but that ethics committee lawyers barred him from talking to the juror because of his role in deciding Traficant's fate.

LaTourette said he'll ask Speaker Dennis Hastert to bring Glaser's concerns to the attention of the House of Representatives before it decides whether to eject Traficant next week.

Another ethics committee member, Cleveland Democrat Stephanie Tubbs Jones, said she wasn't sure how Glaser's statements would affect Traficant's case.

''He's certainly not the first juror to reconsider his decision after a trial,'' Tubbs Jones said.

Glaser, who came to public attention when a Cleveland judge dismissed a traffic citation he was issued while trying to feed a homeless man during the 1996 holiday season, said he would have voted to acquit Traficant of all charges if Detore had testified at the bribery and racketeering trial.

''It would have give me reasonable doubt,'' said Glaser, a design technician at the Cleveland Electric Illuminating Co., who has twice run for mayor of Independence.

But other jurors said the evidence, with or without Detore's story, buried Traficant. Traficant's employees said he made them give kickbacks from their salaries and do unpaid work on his farm and boat. Local contractors said they gave Traficant bribes in exchange for assistance. Wells is scheduled to sentence Traficant on July 30.

''There was just so much evidence in the case and so many witnesses that the wealth of information against [Traficant] was overwhelming,'' said Jeri Zimmerman, a juror

from Mentor. ''I kept saying to myself, 'Please, please show me something, anything, that would make me wonder.' but [Traficant] never did. And the witnesses he called hurt him more than helped him.''

Asked about Detore's testimony before the panel, Zimmerman said: ''That's one person. What about the other 50 people that we saw? The government's case was overwhelming.''

Mr. Speaker, that article is based upon his observation of the hearings here in Washington, D.C.

Then, another juror came forward on Monday of this week and, in pertinent part, his affidavit indicates: ''I did not believe the testimony of the key government witnesses, and I did not believe that the government proved that James Traficant committed any offense,'' and I will include this affidavit for the RECORD at this time.

AFFIDAVIT

LORAIN COUNTY, STATE OF OHIO

Affidavit of Scott D. Grodi

Now comes Scott D. Grodi, and being first duly sworn upon oath, deposes and states the following:

1. I was selected as a juror in the case of *United States of America* vs. *James Traficant* in January 2002. I did not know anything about James Traficant at that time.

2. I served on the jury for eleven weeks and was excused by the Judge, without objection from either the government or the defense so that I could take care of family obligations.

3. I listened to the testimony of all government witnesses, all defense witnesses, in addition to hearing closing arguments before being dismissed.

4. When I was dismissed as a juror, I did not believe the testimony of the key government witnesses and I did not believe that the government proved that James Traficant committed any offense.

5. I do not believe today that James Traficant was guilty of the charges brought against him.

Further affiant sayeth naught.

SCOTT D. GRODI.

Sworn and subscribed before me on this the 24th day of July, 2002 by Scott D. Grodi in Lorain County, Ohio.

JOHN P. KILROY.

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Next week, Mr. Speaker, the judge in Cleveland will consider justice in the Myers case, whether or not to pronounce sentence and what that sentence should be, but first will have to dispose of some due process procedural motions filed by the respondent, Mr. TRAFICANT, including a motion for a new trial.

And I will say I do not know everybody in this House well, but I have been here for 8 years, and I would trust that those Members who know me know I am not a black helicopter guy, I am not a big conspiracy theorist, but Mr. TRAFICANT's argument was, if we believe him, that the Government was out to get him because of other things. And I would say to my friend, and particularly my friends from Massachusetts, I would ask my colleagues if they could have imagined that Joseph Salvati could have been a subject of rogue FBI agents and kept in prison by our Government unlawfully for 35 years.

If my colleagues watched the Today Show and they saw the preview of Mr. TRAFICANT's hearing here today, the second story was about a man who had spent 17 years in prison for murder and the prosecuting attorney was in possession of a confession from another individual, but suppressed it and the man spent 17 years in prison.

I would just close at this point with another observation from 1980, and this observation says: ''I too am a former assistant U.S. attorney. I think I share the feelings of all the Members that have had a chance to review those videotapes,'' again, those are the Myers videotapes, ''that the conduct of the Member in question certainly was repugnant to all of the standards that I believe the Nation expects from this Congress, but I have to agree with the gentleman,'' Mr. Stokes, ''that we do not have the responsibility to judge each other's character, unfortunately, and I think until this matter is finally resolved in the courts that we should really come back and address ourselves to the issue in a climate that is not as political as the one we find ourselves in today.'' That was the gentleman from New York (Mr. RANGEL).

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

Mr. HEFLEY. Mr. Speaker, first of all, I yield 15 minutes of my 30 minutes to the gentleman from California (Mr. BERMAN), the ranking member of the Committee on Standards of Official Conduct, for his control of that 15 minutes.

The SPEAKER pro tempore (Mr. HANSEN). Without objection, the gentleman from California (Mr. BERMAN) will control 15 minutes.

There was no objection.

Mr. HEFLEY. Mr. Speaker, I yield myself such time as I may consume. I rise to speak in opposition to the motion by the gentleman from Ohio (Mr. LATOURETTE), and I oppose the motion for the following reasons: The bipartisan membership of the Committee on Standards of Official Conduct has worked diligently, and I think fairly, over the course of several months, and this has brought us to the resolution under consideration today to expel Representative TRAFICANT. The committee following regular order has placed this matter in the hands of the leadership to schedule it whenever the leadership deemed appropriate.

In fact, when asked what I wanted in this, I said, ''If you let it lay over until September, that is fine with me. If you schedule it now, that is fine with me. Whatever you think is best for the schedule, that is fine with me.'' They scheduled it for tonight, and so tonight is the night that we need to do this business.

The committee reached its decision to sustain nine counts of misconduct against Representative TRAFICANT based on clear and convincing evidence before it. In an article in the Youngstown, Ohio Vindicator, dated July 23, yesterday, the juror, I think the same juror that Mr. LATOURETTE mentioned: ''Leo Glaser said today that his vote to convict U.S. Representative James A. Traficant, Jr., stands. Glaser, juror number 8 in the Federal District Court trial in Cleveland, said his quotes in a newspaper story over the weekend were somewhat inaccurate.

''He said he found the headline in the Cleveland Plain Dealer story, 'Traficant juror changes his mind; now convinced conviction was wrong,' especially inaccurate.'' So while I have sympathy for what Mr. LATOURETTE is trying to do, I do not know if this juror thinks he made the right decision or he did not make the right decision. I cannot tell from these stories. But, Mr. Speaker, I would urge that Members vote against this motion.

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

Mr. BERMAN. Mr. Speaker, I yield myself up to 7 minutes.

I oppose the motion of the gentleman from Ohio (Mr. LATOURETTE), who is a very diligent and very valuable member of the committee, who joined in the unanimous vote to recommend expulsion.

A word about the testimony before the committee of Richard Detore, for when we hear the gentleman from Ohio's (Mr. LATOURETTE) argument, we realize that only one issue has come up since the time that the committee recommended expulsion that changes the facts before us since the committee completed its deliberations, and that is the comments of jurors. I will address those comments in a few moments, but first I want to talk about the testimony that I think is underlying some of the concern, that of Richard Detore.

Unlike the jurors in Cleveland, the eight members of our adjudicatory subcommittee, including myself, heard Mr. Detore's efforts to exculpate Mr. TRAFICANT.

We nonetheless determined that the allegations against the gentleman had been proven by clear and convincing evidence, including count 3, the only count, the single count on which Mr. Detore arguably had pertinent firsthand information. Despite his limited familiarity with the full range of charges against Mr. TRAFICANT, Mr. Detore nonetheless spoke with assurance about matters of which he could not possibly have had direct knowledge, including events in Youngstown, of which this Washington area resident could not have been aware and private conversations which did not include him.

He testified about conversations between Mr. TRAFICANT and J.J. Cafaro, a business plan for whom Mr. TRAFICANT secured a $1.3 million appropriation and who engaged in a sham transaction involving $13,000 in cash and $26,000 additionally in repairs and boat slip fees in a sham transaction pretending to buy Mr. TRAFICANT's boat. Cafaro and the former USAG chief engineer, Al Lange, Cafaro and Cafaro Company treasurer Dominic Roselli, and Cafaro and his accountant Patricia DiRenzo.

Mr. Detore testified on all of these conversations and there is not a bit of evidence that he was a party to or a participant in any of these conversations.

The adjudicatory subcommittee found Mr. Detore either lacking in credibility or found his testimony outweighed by the overwhelming evidence against Mr. TRAFICANT.

It has been argued that as an indicted co-defendant, which he is, he placed himself in great peril by testifying before our committee and that this bolsters his credibility. I think it can be argued just as well that this was his Hail Mary pass to discredit the Assistant U.S. Attorney before his case goes to trial. Mr. Detore clearly demonstrated that ours is the forum where he intended to try to save his neck.

He has repeatedly failed to show up at pretrial hearings in Cleveland citing ill health, yet he managed to make a surprise appearance before our committee last week, testifying for hours late into the night. For that reason, he is now facing contempt charges in Cleveland, charges that he and the gentleman from Ohio will doubtless argue is further evidence by their persecution by the Assistant U.S. Attorney.

Casting further doubt on the voracity of Mr. Detore's allegations of misconduct by the assistant U.S. attorney, is the fact that he similarly hurled accusations of misconduct against the staff of the Committee on Standards of Official Conduct, staff which we know to a certainty acted appropriately and the allegations are patently false.

Let us look at the recantations by juror Leo Glaser. He has been cited as saying that he heard at trial the testimony he heard of Mr. Detore last week. If he had heard that, he might not have voted to convict. I would point out that the conclusion of the Adjudicatory Subcommittee and the recommendation that the gentleman be expelled were based not to the conviction, but on the evidence presented at trial.

Furthermore, Mr. Glaser has gone on to say to the press that he also did not have the opportunity to hear how the Assistant U.S. Attorney might have cross-examined Mr. Detore so he cannot be sure how he would have weighed the Detore testimony. Nor does he know what his fellow jurors might have argued in their deliberations after Mr. Detore's testimony in cross-examination.

And finally, Mr. Detore could have testified at trial. Mr. TRAFICANT did not call him. We do not know whether he would have taken the fifth amendment at trial. He did not take it in our Committee on Standards of Official Conduct hearing. If anyone denied Mr. Glaser the opportunity to hear Mr. Detore during the trial, it was the gentleman from Ohio. It is intriguing to me that suddenly Mr. Detore is made available to make a statement to us.

With regard to the second juror, he did not even participate in the jury deliberations at all. He left the jury to attend a family funeral, an alternate was selected. He has no idea what the give and take was inside the jury room during the deliberations.

Let me reiterate that unlike the jurors in Cleveland, we did hear from Mr. Detore, yet we were not persuaded. We voted for the count with regard to which he testified, count 3, and for eight other counts, finding that the evidence established by clear and convincing evidence that the rules of the House have been violated.

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

Mr. LATOURETTE. Mr. Speaker, I yield 2 minutes to the gentleman from Alabama (Mr. CALLAHAN).

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

Mr. CALLAHAN. Mr. Speaker, I do not rise tonight in defense of guilt or innocence of our colleague, the gentleman from Ohio (Mr. TRAFICANT). I rise tonight in a sense of what I think is fairness. I have a tremendous respect for this body and an overwhelming respect for the Committee on Standards of Official Conduct and the difficult job that they have. I too compliment the gentleman from Colorado (Mr. HEFLEY) and the gentleman from California (Mr. BERMAN), for their tremendous efforts and integrity that has been so prevailed throughout this trial.

I rise tonight in support of this resolution. I am not blessed with a law degree, I do not apologize for that, I just do not have one. But I do know that in court language, when one is going through a trial process, judges sometimes overrule things because of a clause. They say that a bell cannot be unrung. And, indeed, if we tonight ring this bell of guilt against the gentleman from Ohio (Mr. TRAFICANT) during this appeal process, we are only talking about a 6-week delay, in order to make this ultimate decision, in my opinion, it is unfair to my colleague.

I think we ought to give him the benefit of the doubt. It is not professing that we believe he is innocent by delaying this action until September. It is just saying that we are going to give him a chance. Even if someone is convicted of murder in most every State in the Nation, there is always an escape valve because the governor has the right to overturn if evidence is presented that convinces the governor that the defendant is deserving of a new hearing.

What we do tonight is ring the guilt bell upon the gentleman from Ohio (Mr. TRAFICANT) when it is not necessary at this time. Certainly if he is charged with what he is charged with by the Committee on Standards of Official Conduct, and I have no reason to doubt that he has not been charged correctly, then we should act. Certainly we ought to give one of our own colleagues the benefit of doubt. Delay this action for 6 weeks until we get back in September and then vote our convictions.

Mr. HEFLEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Speaker, I rise to urge my colleagues to reject the motion to postpone H.R. 495.

I know how difficult this proceeding is for the gentleman from Ohio (Mr. LATOURETTE), himself a former prosecutor and for the other Members of the Ohio delegation who have served many years with the gentleman from Ohio (Mr. TRAFICANT) and developed close friendships.

If the subject today were a friend and colleague from the Illinois delegation, I cannot say for certain that I would not try to do the same thing. But the subject today is the gentleman from Ohio (Mr. TRAFICANT) and whether this body is best served by postponing the consideration of this resolution until after August.

It is said that there may be new developments in the gentleman's Federal case, and that a month's time might yield a new outcome.

In fact, there was a new development just today in the gentleman from Ohio's (Mr. TRAFICANT) Federal case when a three-judge panel of the U.S. Court of Appeals for the Sixth Circuit denied the gentleman from Ohio's writ of mandamus on a petition relating to jury selection. We heard a great deal about that petition during our hearing, and there is no doubt in my mind that there will be other appeals and other petitions on the gentleman's behalf. But my point is, regardless of whether these approaches succeed or fail in the Federal courts, they are, by no means, relevant to the status of his case in the U.S. House of Representatives.

Why do I say this? For one, our subcommittee did not rely strictly on the transcript from the Federal case.

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We went well beyond it and heard from the gentleman from Ohio's (Mr. TRAFICANT) witnesses, including those who were not allowed to testify on his behalf in Federal court.

Second, our standard of proof is much lower than what a jury faces in a Federal criminal case. In Federal court, it is beyond a reasonable doubt that a crime was committed. In the U.S. House, it is clear and convincing evidence that our code was violated, a very important distinction.

Last, our mission was not to determine whether the gentleman from Ohio (Mr. TRAFICANT) is guilty of a felony count or 10 felony counts. It was to determine whether the gentleman from Ohio (Mr. TRAFICANT) violated the Code of Official Conduct and the Code of Ethics for Government Service, again a very important distinction.

We Members of the House are not a Federal court of appeals nor are we here to second-guess or predict the rulings of juries or judges in the Federal courts of Ohio. We are here to serve our duty under article I, section 5, clause 2 of the Constitution.

As a member of the adjudicatory subcommittee that reviewed the evidence in this case, I would respectfully urge my colleagues to vote against the motion to postpone and for the resolution. Neither justice nor this body will be served by delay.

Mr. BERMAN. Mr. Speaker, I yield myself 1 minute.

I would like to respond to the comments of my very good friend, my colleague from Alabama, because there is a certain quick appeal in the argument that this process is still under way, the sentencing occurs next week, there are appeals, there are writs of habeas corpus following that process.

The motion to postpone is a motion to postpone till September 4. The gentleman from Ohio (Mr. TRAFICANT) has made a motion for a new trial, and that motion has been denied with an extensive opinion by the judge. No one can argue that this appellate process will be even seriously under way, little less completed, by September 4.

The logical conclusion of a process which says we wait until all appeals are exhausted means that the provision of the Constitution which provides that we expel Members for the most egregious behavior is rendered a nullity. I do not think that is what our Founding Fathers intended, and that is not what we should do.

Mr. Speaker, I yield 2½ minutes to the gentlewoman from Ohio (Mrs. JONES), a former judge, a former prosecutor, a great member of our committee.

Mrs. JONES of Ohio. Mr. Speaker, I thank the ranking member, the chairman, and my colleagues who served on the Committee on Standards of Official Conduct. What an experience.

Service on the Committee on Standards of Official Conduct is not a committee assignment for which there is a lot of competition. In fact, it is not even an enviable position. However one is called into service, each Member must accept his or her responsibility and obligation to serve with honor and integrity, consistent with the tradition of this great House of Representatives which we love and revere.

I seriously considered not speaking before the full House, in part because I believe that the misfortunes of one of my colleagues should not be used for political purpose or grandstanding. However, having accepted this responsibility of serving on the Committee on Standards of Official Conduct, I believed it my duty and obligation to speak out in support of the decision that we made and in opposition to delay.

Let me say at the outset that I have known the gentleman from Ohio (Mr. TRAFICANT) for many years. As he stated many times in that hearing, he was a vocal supporter of my candidacy for the Ohio Supreme Court, and for that I will ever be thankful. Some even questioned my ability to serve, and I knew that I could be fair and so did the gentleman from Ohio (Mr. TRAFICANT).

Let me go for a moment to this question about where the money was if the gentleman from Ohio (Mr. TRAFICANT) got the money. If my colleagues got the money, would they put it in the bank?

Let us talk a little bit about these jurors. I have tried many cases, both as a judge and as a prosecutor, and there were many times where jurors, once they rendered that decision, wanted to back up and say, I do not know if that was the right decision; judge, can tell us whether he was guilty or not or whatever it was. Jurors make decisions based on all the facts and evidence that is before them at that particular time, and this is what those jurors did.

The burden was beyond a reasonable doubt, the highest burden of proof in our Nation. Our committee has a job and our committee is, and we are not governed by the same rules that my great colleague, Mr. Stokes, whom I have a lot of respect for, was when he made the motion back on Mr. Myers. Our rules of ethics are different. They are not the same as they were back when Mr. Myers was presented before this House.

The rules say that this body can make a decision to expel a Member prior to sentencing and prior to conviction, and that is what this committee recommended to my colleagues.

We are not a jury. We are not a criminal court. We are in the court of the House of Representatives and the court of public opinion which expects us to do our job, unlike the gentleman from Ohio (Mr. TRAFICANT), but my job is to make a decision right here on the House of Representatives. Vote against the motion.

Mr. LATOURETTE. Mr. Speaker, I yield myself 30 seconds to make the following observation.

Both the distinguished chairman and the distinguished ranking member, I think, said what I have been trying to say. They repeatedly said that we do not know, we do not know this, we do not that. That is the point of laying this over.

Secondly, to my good friend from Illinois, with all due respect, I could be fair if this respondent was from Idaho, Iowa or Timbuktu.

To the gentlewoman from Ohio (Mrs. JONES), my good friend and former colleague who was a prosecutor in Ohio, the rules have changed but justice has not since 1980, I hope.

Mr. Speaker, I yield 4 minutes to the gentleman from Indiana (Mr. BURTON).

Mr. BURTON of Indiana. Mr. Speaker, the prosecutor allegedly threatened a witness and said if he did not say what he wanted him to say he would be indicted. He did not say what he wanted him to say and he was indicted. That could be prosecutorial misconduct. I do not know. If the court upholds the decision that they have made and they sentence the gentleman from Ohio (Mr. TRAFICANT) to prison, I certainly will vote for expulsion, but I do not know whether there was prosecutorial misconduct.

I do know that two jurors, after watching the ethics hearing, said if we had known and seen what we saw before the Committee on Standards of Official Conduct, we would have voted otherwise. That creates a little bit of doubt in my mind, and I do not know and I do not think any of my colleagues know tonight if the judge might say, hey, because of the jurors' reevaluation of this, maybe we should order a new trial. I do not know if he will do that or not. He may not, but that is his decision.

I do know that he is going to be making that decision next week and he is also going to be making a decision on whether or not to send the gentleman from Ohio (Mr. TRAFICANT) to prison for how long, and for the life of me, and I say this to both my Democrat and Republican colleagues, I cannot understand why we cannot wait until we come back from break to vote on this issue.

That is why I support the motion of my colleague who serves on the Committee on Government Reform with me, and I am sure that he would have the same attitude whether the gentleman from Ohio (Mr. TRAFICANT) was from California, New York or whatever, because that is the kind of man that the gentleman from Ohio (Mr. LATOURETTE) is.

Another reason why I feel very strongly about this is we have had hearings, numerous hearings about what went on in Boston about 30 years ago where they put an innocent man in jail for over 30 years for a crime he did not commit, and I believe all the way up to J. Edgar Hoover, they knew he was innocent, but they were protecting Mafia informants.

So many times there are miscarriages of justice. I am not saying that is the Traficant case, but it happens, and for that reason alone I think we ought to say let us take a deep breath, go on break, come back in 4 or 5 weeks and then vote on this issue. If he is sentenced, if he goes to prison, he should be expelled, and I will vote for expelling, but what in the world is wrong with waiting for 4 or 5 weeks? I simply do not understand that.

Mr. HEFLEY. Mr. Speaker, I yield myself 1 minute, and then I am going to yield to the gentleman from Missouri.

There is a lot that we do not know, as the gentleman from Ohio (Mr. LATOURETTE) said, about the argument that the gentleman from Ohio (Mr. TRAFICANT) made about judicial misconduct or prosecutorial misconduct. There is a lot we do not know about that.

What we do feel we know, however, is that there was clear and convincing evidence on the charges that he was charged with before the Committee on Standards of Official Conduct, and in summary, that is four counts of bribery over a long period of time; that is obstruction of justice; that is defrauding the government through the use of

congressional staff for personal service; and there was false statements on income tax returns. We think we know that by clear and convincing evidence.

Clear and convincing, those of my colleagues who are attorneys know better than I do, equals highly probable. Clear and convincing evidence means it is highly probable that he is guilty of these offenses. It does not equal absolute certainty, and it does not even equal the reasonable doubt standard that the judge mentioned over here. It means it is highly probable. That is what the committee's conclusion was.

Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. HULSHOF).

Mr. HULSHOF. Mr. Speaker, let me say at the outset that I hold the gentleman from Ohio (Mr. LATOURETTE) in highest esteem. Over the course of the past 10 days, during this very long and arduous process, we have agreed and we have disagreed. We have passionately advocated different points of view, and I respectfully disagree with this motion and urge my colleagues to vote down that motion to continue.

What I would like to do is really just address just the folks who may be harboring these thoughts or fears of an acquittal or some different outcome during this appellate process, which I absolutely agree with the gentleman from California (Mr. BERMAN) will not be concluded within 6 weeks.

Our task today, Mr. Speaker, is as different from that criminal jury verdict as the legislative branch is different from the judiciary. Our task tonight is as dissimilar as article I is different and separate and apart from article III.

Unlike the matter that was debated on this House floor on October 2, 1980, in Mr. Myers' case, the Committee on Standards of Official Conduct relied entirely upon the guilty verdicts. Mr. Myers had not been given a full-blown hearing before the Committee on Standards of Official Conduct.

As my colleagues know and has been discussed, we had that hearing. In fact, the gentleman from Ohio (Mr. TRAFICANT) was given great latitude. He was treated generously by a committee of his colleagues who respected the gravity of the occasion which brought us face to face. Would that the gentleman from Ohio (Mr. TRAFICANT) had acted in a reciprocal manner, but even the antics of last week are irrelevant to the decision that was reached by our committee.

We reached our decision on 9 of 10 violations of House rules independent and apart from the jury verdict in Cleveland. So on the process and procedural grounds the gentleman from Ohio's (Mr. LATOURETTE) motion must fail, but on substance, it fails as well.

This witness, Mr. Detore, the committee considered his testimony and rejected it. As the gentleman from California (Mr. BERMAN) pointed out, and let me reiterate, Mr. Detore exonerated himself for the criminal charge with which he was indicted, and yet he offered no defense to the gentleman from Ohio's (Mr. TRAFICANT) kickback scheme of accepting $30,000. Mr. Detore offered no defense on the $30,000 kickback scheme between the gentleman from Ohio (Mr. TRAFICANT) and a congressional staffer. Mr. Detore provided no testimony on the illegal gratuities supplied by constituents to the gentleman from Ohio (Mr. TRAFICANT) at the gentleman from Ohio's (Mr. TRAFICANT) behest.

Mr. Detore offered nothing on the charge of obstructing justice by encouraging others to give false testimony to the authorities.

Mr. Speaker, there has been a lot of reference and comparison between what we are doing today and tonight compared to that same debate that was within these hallowed halls some 22 years ago. Perhaps one other comparison, I hope, is appropriate. The House of Representatives in the Myers case voted down Mr. Stokes' motion 332 to 75. For procedural and substantive grounds, the motion from the gentleman from Ohio (Mr. LATOURETTE) must fail.

Mr. BERMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN), a distinguished member of the committee.

□ 1945

Mr. GREEN of Texas. Mr. Speaker, I thank my colleague for yielding me this time.

Mr. Speaker, I am the newest member of the Committee on Standards of Official Conduct, and like all of my colleagues, I did not want it. In fact, I had to be asked three times by the leadership on our side before I would say yes. But I rise tonight to oppose the motion to postpone until September 4.

This House is more important than any of us individually. We will come and go. Our voters will make that decision. What my concern is what this looks like for our House of Representatives for the future. Sentencing for the gentleman from Ohio (Mr. TRAFICANT) is set for next Tuesday, July 30. We will be in recess until September 4. We could actually have our colleague serving with us and also serving in Federal prison for a month.

I would hope we would not think about us as individuals but think about us as a House and ask ourselves if we want that for our House of Representatives, and not really ours, as Members, but the people of this United States. I do not think it is right, and I do not think it does this House honor.

I will not repeat what my colleagues have said who heard the testimony. I listened to Mr. Detore, and I found that he must be a very nice fellow, but I did not find him to be a credible witness on even the issues he was trying to talk about. I felt like he was out of the loop even on those issues, much less that we need to remember that the jury in Cleveland convicted our colleague of nine other felony counts. The committee found eight other counts and unanimously voted for expulsion.

Mr. LATOURETTE. Mr. Speaker, it is my pleasure to yield 3 minutes to the gentleman from Texas (Mr. PAUL).

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

Mr. PAUL. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise in support of the motion by the gentleman from Ohio.

It is not easy to do this, obviously, and it is difficult for all of us to be here because it seems like, on the surface, there was unethical, probably illegal, and certainly bizarre behavior, and we feel offended by this and we feel compelled to do something to prove that we are keeping our House in order.

I am not an expert on the legal part of this case. I would not pretend to be, and the Committee on Standards of Official Conduct deserves the credit for the effort they went through to dig out the information. But the process disturbs me, and that is why I wanted to take a minute or two to talk about that.

The point was made earlier that the House's conditions are a lot different than the legal conditions for guilt and, therefore, they are not as stringent. But we would not be here if Mr. TRAFICANT had not been convicted, and so that is key. That is the important issue.

And that trial bothers me. I do not accept it as a good, fair, legitimate trial. I do not think all the witnesses were heard that should have been heard, and I think some of the witnesses may well have been ''bribed'' into doing and saying certain things.

But there is more that bothers me. I would like to see the appeals process completed. I was here in 1984, on my first tour of duty here in the House, and the George Hansen case came up and we voted then to convict. I think he had FEC violations and we voted to censure him. He lost his election, he lost his job, he lost his money, he went to jail and served time, and then he was exonerated on everything. He won all his appeals. I do not see the need to rush to judgment, certainly tonight.

I am not happy that when the gentleman finally gets an opportunity to come and defend himself, he gets a total of 30 minutes. Really? And have my colleagues looked at the record of the case in Ohio? It contains a stack a foot high. Thirty minutes to defend himself? I do not think that is really fair.

But there is another thing that bothers me, and that is the change of venue. I believe that the change of venue has been used historically in this country to make sure that the most horrible criminal gets a fair trial and gets his case moved from a area unduly influenced by media coverage. Have any of my colleagues ever heard of a trial being moved for the benefit of the State and to the disadvantage of the defendant? It may have happened, but I

do not know about it, and I think that in itself is a reason to step back, take a look at this, and vote for the motion by the gentleman from Ohio.

Mr. Speaker, many of Congressman TRAFICANT's actions are impossible to defend. Mr. TRAFICANT has most likely engaged in unethical behavior. I would hope all my colleagues would join me in condemning any member who would abuse his office by requiring his staff to pay kick-backs to him and/or do personal work as a condition of employment. I also condemn in the strongest terms possible using one's office to obtain personal favors for constituents, the people we are sent here to represent. Such behavior should never be tolerated.

However, before expelling a member we must consider more than eccentric behavior and even ethical standards. Questions of whether the process of his court conviction and expulsion from Congress respected Mr. TRAFICANT's constitutional right to a fair trail and the right to be represented of those who elected him to office, are every bit as important.

Many Americans believe that Congress daily engages in ethically questionable and unconstitutional actions which are far more injurious to the liberty and prosperity of the American people than the actions of Mr. TRAFICANT. Some question the ability of Congress to judge the moral behavior of one individual when, to take just one example, we manage to give ourselves a pay raise without taking a direct vote on the issue.

Mr. Speaker, after carefully listening to last week's ethics hearing, I have serious concerns over whether Mr. TRAFICANT received a fair trial. In particular, I am concerned over whether the change of venue denied Mr. TRAFICANT a meaningful opportunity to present his care to a jury of his peers. Usually change of venue is instituted in cases where the defendant is incapable of receiving a fair trial. I am unaware of any case where the venue is changed for the benefit of the state.

However, the most disturbing accusations concern the possibility that Mr. TRAFICANT was denied basic due process by not being allowed to present all of his witnesses at the trial. This failure raises serious questions as to whether Mr. TRAFICANT had the opportunity to present an adequate defense. These questions are especially serious since one of the jurors from Mr. TRAFICANT's criminal trial has told the Cleveland Plain Dealer, that had he heard the testimony of Richard Detore at Mr. TRAFICANT's trial, he would have voted ''not guilty.''

Mr. Speaker, I also question the timing of this resolution and the process by which this resolution is being brought to the floor. Mr. TRAFICANT's conviction is currently on appeal. Many Americans would reasonably wonder whether the case, and the question of Mr. TRAFICANT's guilt, can be considered settled, until the appeals process is completed. I fail to see the harm that could be done to this body if we waited until Mr. TRAFICANT has exhausted his right to appeal.

Prior to voting to expel Mr. TRAFICANT before he has completed his appeals, my colleagues should consider the case of former Representative George Hansen. Like Mr. TRAFICANT, Mr. Hansen was convicted in Federal court, censured by the Congress, and actually served time in Federal prison. However, Mr. Hansen was acquitted on appeal—after his life, career and reputation were destroyed.

If my colleagues feel it is important to condemn Mr. TRAFICANT before the August recess, perhaps we should consider censure. Over the past 20 years, this body has censured, instead of expelled, members who have committed various ethical and even criminal activities, ranging from being convicted of bribery to engaging in sexual activity with underage subordinates.

I am also troubled that Mr. TRAFICANT is only being granted a half-hour to plead his case before the house. Spending only an hour to debate this resolution, as if expelling a member of Congress is of no more importance than honoring Paul Ecke's contributions to the Poinsettia industry, does no service to this Congress.

In conclusion Mr. Speaker, because of my concerns over the fairness of Mr. TRAFICANT's trial I believe it is inappropriate to consider this matter until Mr. TRAFICANT has exhausted his right to appeal.

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

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

Mr. LATOURETTE. Mr. Speaker, it is now my pleasure to yield 3 minutes to the gentleman from California (Mr. ISSA).

Mr. ISSA. Mr. Speaker, it is not easy for a freshman to get up and talk about a Member that I do not know very well. Although I was born in Ohio, I am not here because of some relationship to Ohio. I am a California representative. I was voted by, in my particular case, over 800,000 people I now represent, until we get reapportioned. All of my colleagues got here because of over 600,000 or more voters. They put us here, this body did not. Our governors did not put us here; a court did not put us here.

We are a unique body. We get here by one and only one reason, and that is 1/435th of the country votes to put us here. I do not know the people of Youngstown all that well, but they put the gentleman from Ohio (Mr. TRAFICANT) here, and I take it as an extremely important and extremely solemn duty to decide to take the extraordinary measure of removing him.

I must tell my colleagues that I am also not a lawyer, but I am going to have to decide, hopefully in the next month rather than the next hour, whether or not to, for the second time in modern history, I guess for the second time in history practically, to remove a Member. I do not have enough information.

I respect the gentleman from California (Mr. BERMAN). I respect the chairman. I believe that they have looked at this long and hard. But I have not had the opportunity. And as lawyers often say, I must look at this sua sponte. I am sorry, de novo. See, I am not an attorney. I have to look at this anew, and I am not prepared to do it now. I would appreciate the opportunity to see what the court in Cleveland does over the break. I would appreciate the opportunity to review the records and have my staff assist me. I will probably, when the times comes, vote as my colleagues do.

Now, if I can just make one statement to this body, because there was a reference from one of my colleagues that in fact we had to worry about the image of this body. We will be gone after tomorrow, more or less, for a month. There will be no votes. There will be no activity. Whether the gentleman from Ohio (Mr. TRAFICANT) is a Congressman or an ex-Congressman, he has a cloud that he is living under that he will have to deal with. It will make no difference to them. This body will survive one month of somebody with a conviction not yet sentenced or sentenced and not yet incarcerated.

I believe that if we give it that time, if all of us go and soul-search, take the time to understand the case, when we come back, whatever the vote is, we will feel better for ourselves and for this body if we have taken the deliberative time, and I ask my colleagues to please support this motion to give enough time for us to do the job right. We do not do it that often.

Mr. HEFLEY. Mr. Speaker, I have no further requests for time, and I yield myself the balance of my time.

I would just sum up with a few statements at this point. This is no rush to judgment. We have been struggling with this for some time. Most of my colleagues have not been as intensely involved with it, nor should you be, because you have other responsibilities and you have given us this responsibility.

The gentleman from Ohio (Mr. TRAFICANT) is not getting 30 minutes to defend himself. He is getting 30 minutes here on the House floor. He had 5 hours before the committee, and it amounted to a great deal more than that because we gave additional time for him. He had the entire hearing process to defend himself.

The gentleman that just spoke said he had not had time to really study it and understand. Well, the trial transcripts have been on the Internet for at least a week. Monday, the exhibits and the transcripts were all delivered to Members' offices. We are busy, and I know it is hard to have time to go through, and it is volumes of material, so I am not criticizing anybody for that, but my colleagues have heard tonight from the members of the Committee on Standards of Official Conduct, members that have been deeply and intensely involved in this over the last few weeks and months, as a matter of fact. And not one member of that committee did I sense was out to get JIM TRAFICANT. I sensed no hint of partisanship in that hearing. And I would suspect that JIM TRAFICANT would agree to that, that there was not a partisanship angle to this in the committee. I think this was a very painful decision for every one of us. JIM TRAFICANT and I have been friends. JIM TRAFICANT has been a friend to most of you in here.

This is not a pleasant time or a pleasant task. If I thought that between now and September 4 the landscape would change substantially, then I might be with the gentleman from Ohio (Mr. LATOURETTE) and say let us put this off until September. But, my colleagues, I must say that the largest single profession represented in the United States Congress is lawyers, so you know, and I am not a lawyer, but my colleagues know that the appeals process can drag on and on and on for months, sometimes for years.

So if we do not do this tonight, I do not know exactly when we are going to do it. I just do not think it is going to change between now and September 4. So I would respectfully ask that Members reject the motion of the gentleman from Ohio (Mr. LATOURETTE).

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

Mr. BERMAN. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LOFGREN), the ranking member of the subcommittee that investigated and prepared the statement of alleged violations. She has been a member of this committee for 5½ years. She has performed wonderfully far more than her share of the burdens of this committee in this and other matters.

Ms. LOFGREN. Mr. Speaker, as the gentleman from California (Mr. BERMAN) has said, I have been a member of the Committee on Standards of Official Conduct now for 5½ years, and in those 5½ years, in every case, every member of the Committee on Standards of Official Conduct has tried to discharge their duty fairly and to do the right thing. That has always been the goal. There has never been a drop of partisanship in the committee.

As we have worked through this, I think it is important to share what the Committee on Standards of Official Conduct reviewed before coming here today.

We have heard about this Mr. Detore, who was not found to be a credible witness by the adjudicatory subcommittee. But in addition to that testimony offered to the committee, we reviewed 6,000 pages of testimony, more than 50 witnesses for the prosecution, and 29 witnesses called by the gentleman from Ohio (Mr. TRAFICANT).

What we found in the review of the statements of those witnesses that were subject to cross-examination is, regrettably, a pattern of tens of thousands of dollars that were delivered to the gentleman from Ohio (Mr. TRAFICANT) in kickbacks and bribes, the most serious misconduct that we need to address here.

Now, it has been suggested that we delay these proceedings. If we delay to September 4, we will know nothing more than we do this evening. We will not have an appellate decision. We will just know what we know today.

□ 2000

Mr. Speaker, I would note that article I, section 5, says it is for each House to determine with the concurrence of two-thirds whether to expel a Member. It is not for the House to delegate to the judiciary the decision on who is fit to serve in each body.

I would urge that we step up to our unpleasant duty this evening, that we discharge our obligations granted to us under article I, section 5 of the Constitution, and that we act this evening, unhappy as that task may be.

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

Mr. Speaker, I want to talk about the quote ''rush to judgment.'' Quite a long time ago, well over a year and a half ago, the Chair and the ranking member of the committee and the staff of the committee were aware of articles talking about indictments, investigations, facts for which there would have been ample evidence for the committee to proceed at that time to investigate totally separate from the criminal justice process.

The committee chairman and the ranking member said no, let us wait; let the criminal justice system work. Let us not rush and push this. We know the complications when there is a dual-track investigation, and we refrained from acting.

There was a trial and there was a conviction, and the only thing this committee did was to make sure they gathered the information and the transcripts from the trial as that trial went on. Now the conviction comes in; and many Members of this body, either proposed or wanted to propose privileged resolutions essentially saying we have a Member of our body, a colleague of ours who has been convicted of 10 felony counts. This is intolerable, we want to expel, and they could have brought a privileged resolution to this floor. We went to those colleagues, and we persuaded them to defer to this process. Let us do it according to the rules, give the subcommittee the adjudicatory committee and the full committee a chance to look at the evidence, gather it, and produce it. We did that.

We come forward in regular order. I ask Members to reject the motion, do not reject the committee's process and the process of restraint and justice that we have shown and vote ''no'' on the motion to postpone.

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

Mr. Speaker, again for those colleagues who have been involved in the criminal justice system, I would tell them, and I do not disagree with things that have been said by other members of the committee, Mr. Detore, whom I found to be credible, and with all due respect to the gentlewoman from California, I would ask Members to ask other members of the adjudicatory subcommittee whether they found Mr. Detore to be credible or not, but the difference is this. The committee was left with a cold hard 6,000-page transcript. We were not able to see the accusers of the gentleman from Ohio (Mr. TRAFICANT), whether they sweat, whether they reacted under cross-examination.

Mr. Detore came in, and I just want to read one portion of what I was able to see him say in response to the questions put to him by the committee, the gentleman from Ohio (Mr. TRAFICANT), and counsel for the committee.

He said, ''I have lost faith in my ability to tell my kids to be honest, to be truthful, to be fair to others, and others will be fair to you. This is not where I was born. I don't know what is going on here. This is like having an out-of-body experience in another planet. The amount of treachery, deceit and lies throughout is unbelievable.

''I got a wife laying home with shingles from stress, she can't even move, paralyzed. I have two children crying, upset, a nervous wreck. I have never had situations where I passed out in my entire life. But 2 years of pure hell, and I defy anybody to walk in my shoes. And I could have simply just taken an easy path and just said, okay, I will say what you want me to say.''

I had the chance to see him, and so did the other members of the committee. We were deprived of the opportunity to see any other witness who accused the gentleman from Ohio (Mr. TRAFICANT) of anything. And so the committee was in a position of substituting our judgment as to whether they were more credible than the Congressman, whether they were more credible than Mr. Detore. We had to accept the judgment of 12 jurors, 350 miles and 6 months away.

I made this example in my conference earlier that, again, being a prosecutor, I am familiar with death penalty cases. In a death penalty case if we receive information that something is not right, I think everybody in this Chamber would pick up the phone and call the Governor and say, Governor, we have to give it a couple of days until we check it out because it is irreversible.

What we are being asked to do tonight is the equivalent. It is the political death penalty. We cannot put the toothpaste back in the tube. If the gentleman gets a new trial next Tuesday, we cannot unexpel him next Wednesday. This is final tonight. All we are asking is for Members to follow what Mr. Stokes and the gentleman from New York (Mr. RANGEL) asked the body to do in 1980.

In closing, I want to thank all of the Members who spoke on behalf of our motion, but I want to highlight the comments of the gentleman from California (Mr. ISSA) in particular. I mentioned that both of these motions are occurring days before a month-long recess; and in that debate in 1980 a Member said, ''I think the conduct engaged in by Mr. Myers is reprehensible and, if we do proceed to a final vote on the issue today, I shall vote to expel him. I deeply believe that this is precisely the wrong time for this House to act. I say that for a very simple reason . . .

This is the last week of the session, and almost every Member is doing what I am doing. We are closeted in meetings with our staffs. We are trying to clear the deck to get out of here. We are paying attention not to the Myers case, but we are paying attention to what we have to put into our briefcases to go home . . . I would submit that this is not the correct atmosphere in which to take the historic action which we will be taking today.''

That Member of Congress was the gentleman from Wisconsin (Mr. OBEY), again on October 2, 1980.

Mr. Speaker, I am not asking Members to do anything tricky, anything that violates their conscience. This is a vote of conscience; and I want to thank everybody in the debate, the chairman, the ranking member and all of the members of the committee, and the staff of the committee was tremendous. I agree with everything that Members said. Not one person on that committee was out to get the gentleman from Ohio (Mr. TRAFICANT). Every Member of that committee listened carefully to the evidence.

But I am telling Members, when we have to compare warm bodies who come in and we can see in their eyes and their souls as to whether or not they are credible, and you put that up against a book of 6,000 pages, the book should not win; and the book should not especially win when all we are asking, we are not asking for the appeals process to go through habeas corpus and all of the hoops that may take place, we are leaving on Friday. The first day we come back, if Members want to kick the gentleman from Ohio (Mr. TRAFICANT) out of Congress, we have not lost anything. We could still do it. The only thing we have done is given, and perhaps we will get questions that the ranking member and the chairman asked, we do not know. Maybe on September 4 we will know. I ask Members to think about it.

Mr. LATOURETTE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HANSEN). All time for debate on the motion has expired.

Without objection, the previous question is ordered on the motion.

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. LATOURETTE).

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

RECORDED VOTE

Mr. BERMAN. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 146, noes 285, not voting 3, as follows:

[Roll No. 345]

AYES—146

Abercrombie
Aderholt
Bachus
Ballenger
Barr
Bartlett
Bilirakis
Boehner
Bonilla
Boswell
Brown (FL)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Cannon
Carson (IN)
Chabot
Chambliss
Clay
Clayton
Clyburn
Coble
Collins
Condit
Cooksey
Costello
Coyne
Crane
Cubin
Cummings
Cunningham
Davis (IL)
Deal
Delahunt
Diaz-Balart
Doolittle
Duncan
Edwards
English
Everett
Foley
Fossella
Gekas
Gibbons
Gillmor
Gilman
Goode
Gordon
Goss
Green (WI)
Grucci
Gutknecht
Hall (TX)
Hart
Hastings (FL)
Hilleary
Hilliard
Hinchey
Hobson
Horn
Hunter
Inslee
Issa
Jackson (IL)
Jackson-Lee (TX)
Jenkins
Johnson (CT)
Johnson, E. B.
Jones (NC)
Kaptur
Kerns
King (NY)
Kingston
Kucinich
LaFalce
Larson (CT)
LaTourette
Lee
Lewis (CA)
Lewis (KY)
Lipinski
Lucas (OK)
McDermott
McGovern
McInnis
McKeon
McKinney
Miller, Gary
Mink
Neal
Ney
Norwood
Oberstar
Osborne
Ose
Otter
Oxley
Paul
Payne
Peterson (MN)
Peterson (PA)
Petri
Pitts
Pombo
Portman
Pryce (OH)
Regula
Riley
Rohrabacher
Rothman
Rush
Ryun (KS)
Sandlin
Scott
Serrano
Sessions
Sherwood
Shuster
Simpson
Skeen
Smith (MI)
Smith (NJ)
Sweeney
Tancredo
Tauzin
Taylor (NC)
Thompson (MS)
Tiahrt
Tiberi
Towns
Traficant
Wamp
Waters
Watkins (OK)
Watt (NC)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Young (AK)
Young (FL)

NOES—285

Ackerman
Akin
Allen
Andrews
Armey
Baca
Baird
Baker
Baldacci
Baldwin
Barcia
Barrett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Bono
Boozman
Borski
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Camp
Cantor
Capito
Capps
Capuano
Cardin
Carson (OK)
Castle
Clement
Combest
Conyers
Cox
Cramer
Crenshaw
Crowley
Culberson
Davis (CA)
Davis (FL)
Davis, Jo Ann
Davis, Tom
DeFazio
DeGette
DeLauro
DeLay
DeMint
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Forbes
Ford
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gephardt
Gilchrest
Gonzalez
Goodlatte
Graham
Granger
Graves
Green (TX)
Greenwood
Gutierrez
Hall (OH)
Hansen
Harman
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hinojosa
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Houghton
Hoyer
Hulshof
Hyde
Isakson
Israel
Istook
Jefferson
John
Johnson (IL)
Johnson, Sam
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kirk
Kleczka
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Latham
Leach
Levin
Lewis (GA)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McHugh
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, George
Miller, Jeff
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Nethercutt
Northup
Nussle
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Pelosi
Pence
Phelps
Pickering
Platts
Pomeroy
Price (NC)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Rehberg
Reyes
Reynolds
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Roukema
Roybal-Allard
Royce
Ryan (WI)
Sabo
Sanchez
Sanders
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Sensenbrenner
Shadegg
Shaw
Shays
Sherman
Shimkus
Shows
Simmons
Skelton
Slaughter
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Tanner
Tauscher
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Thurman
Tierney
Toomey
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Watson (CA)
Waxman
Weiner
Wexler
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn

NOT VOTING—3

Bonior
Knollenberg
Stearns

□ 2026

Mr. WYNN, Mrs. EMERSON and Mr. JOHN changed their vote from ''aye'' to ''no.''

Mr. NEAL of Massachusetts changed his vote from ''no'' to ''aye.''

So the motion to postpone consideration was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Colorado (Mr. HEFLEY) is recognized for 1 hour.

Mr. HEFLEY. Mr. Speaker, first of all I would like to yield half of that time, 30 minutes, to the gentleman from Ohio (Mr. TRAFICANT). That leaves me with 30 minutes. And I would like to yield for control of the time, half of that time, 15 minutes, to the gentleman from California (Mr. BERMAN) who is the ranking member of the Committee on Standards of Official Conduct.

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

There was no objection.

The SPEAKER pro tempore. In both cases, the gentleman yields for purposes of debate only.

Mr. HEFLEY. For debate only.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Colorado (Mr. HEFLEY).

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

Again I renew my call for the privileged resolution, I think it has been read, so I rise in support of that House Resolution 495 which calls for the expulsion of Representative JAMES A. TRAFICANT, Jr., from the House of Representatives.

On July 17, 2002, the Adjudicatory Subcommittee of the Committee on Standards of Official Conduct held pursuant to the vote requirements of committee rule X that nine of the 10 counts contained in the statement of alleged violations adopted by the Investigative Subcommittee in the matter of JAMES A. TRAFICANT, Jr., had been proved by clear and convincing evidence. These counts involved findings that Mr. TRAFICANT engaged in the following acts that did not reflect credibly on the House of Representatives:

Bribery by trading official acts and influence for things of value; demanding and accepting salary kickbacks from his congressional employees; influencing a congressional employee to destroy evidence and to provide false testimony to a Federal grand jury; receiving personal labor and the services from his congressional employees while they were being paid by the taxpayers to perform public service; and filing false income tax returns.

On July 18, 2002, the full Committee on Standards of Official Conduct held a public sanction hearing to determine what sanction, if any, the committee should recommend to the House of Representatives with respect to the nine counts of the statement of alleged violations proven by clear and convincing evidence in this matter.

With respect to any proved counts against Mr. TRAFICANT, the committee may recommend to the House one or more of the following sanctions: We could recommend a fine, we could recommend a reprimand, we could recommend censure or we could recommend expulsion from the House of Representatives, and two other possible recommendations would be denial or limitation of any right, power, privilege or immunity of Mr. TRAFICANT if permitted under the U.S. Constitution, or any other sanction determined by the committee to be appropriate.

With respect to the sanctions that the committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion is appropriate for the most serious violations.

□ 2030

Due to the most serious nature of the conduct in which Representative TRAFICANT engaged, including repeated and serious breaches of the public trust, the committee reported this resolution to the House on July 19, 2002, with its unanimous recommendation that Representative TRAFICANT be expelled from the House of Representatives.

In its 213-year history, the House has expelled only four of its Members. Three of those expulsions occurred during the Civil War and were based on charges of treason. The fourth expulsion was that of Representative Michael J. Myers in 1980 and was based on Representative Myers' conviction on Federal bribery and conspiracy charges arising from the ABSCAM investigation.

It is important to note, however, that the number of actual expulsions from the House should be considered with regard in light of the fact that a number of Members who committed violations of the most serious nature resigned their seats or lost elections before formal action could be taken.

Mr. Speaker, when each of us was sworn in as a Member of the House of Representatives, we took an oath to support and defend the Constitution of the United States. Article I, section 5 of the Constitution states that each House of Congress may punish its Members for disorderly behavior and expel a Member with the concurrence of two-thirds of its Members. One of the last lines of our oath of office states that each of us will ''well and faithfully discharge the duties of the office on which I am about to enter.'' To my thinking, it is this section of the oath that is the focal point of the proceedings tonight.

None of us ever wants to sit in judgment of our peers. There are some unique occasions, however, when the behavior of an elected official violates the public trust to such an extent that we are called upon to uphold this provision of the Constitution that we swore to support and defend.

It is for this reason, and I have to tell you, friends, with a genuine sense of sadness, that I bring this resolution to the floor of the Chamber tonight.

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

The SPEAKER pro tempore (Mr. HANSEN). The Chair recognizes the gentleman from California (Mr. BERMAN).

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

Mr. Speaker, like the chairman, I rise in sadness, but in strong support of the motion to expel. The gravity of the offenses of the gentleman from Ohio against the rules of the House compel us to impose the most severe of sanctions, and thereby uphold the honor and integrity of the people's House.

I say this, and I can say this with certainty, because of the rigor and the evenhandedness of the process undertaken by the committee, consistent with House and committee rules, and with the resolve of a chairman who, in every instance he could, bent over backwards to ensure fairness and afford the gentleman from Ohio a full and fair opportunity to present his defense.

We gave the assertions of the gentleman every consideration. We entertained every motion, admitting into evidence virtually every document he offered, and, despite having the trial transcript before us, nonetheless heard from a number of additional witnesses, including some who had testified for him at trial.

And what was the gentleman's defense? That he paid for the labor and materials provided to him on his farm; that, in the alternative, the farm wasn't his; that he paid for the cars provided to him; that the kickbacks he demanded from the staff were in fact loans voluntarily tendered to him and repaid by him.

But take a closer look. The gentleman had a very busy winter of 1999–2000. The Federal investigation of him had started, and suddenly he was constructing his defense. In December 1999, he transfers the title to his farm to his wife and daughter. He pays J.J. Cafaro $7,000 for three cars that had been given to him from 1997 to 1999, and he pays, this is count two, David Sugar's company $1,100 for work done on the farm 6 months earlier. Not until April of 2000 does Sugar instruct his secretary to create false invoices for the work.

In January 2000, after learning of the investigation, he gives his Congressional employee, Alan Sinclair, $18,500 in cash, indicating that the cash came from Cafaro, telling Sinclair to keep the cash at home to justify the withdrawals he had made from his paycheck. He gives Sinclair a note, again after he knows the investigation is going on, saying, ''They may ask you if you ever gave me money, and you did. You lent me cash on several occasions and I did pay you back in cash.''

The next month he gives Sinclair another $6,000 and gives Cafaro $3,000 more for the three cars. These transparent fabrications did not impress the committee.

Mr. TRAFICANT protests that he is the victim of selective prosecution, indeed of government misconduct, but in order to believe his assertions you would have to accept the gentleman's notion of a vast, unparalleled conspiracy involving not only the self-interested and disreputable characters from Youngstown, but also involving the Office of the U.S. Attorney, the IRS, the FBI, a respected U.S. District Judge, the counsel for the Committee on Standards of Official Conduct, a conspiracy designed by Janet Reno and implemented by John Ashcroft.

You would have to believe that thousands of pages of testimony by prosecution witnesses, including many low-ranking employees accused of no wrongdoing who testified of being ordered to do work for the gentleman, and the hard documentary evidence against him, are all a tissue of lies, the result of evil intent, manipulation, coercion and intimidation by a treacherous cabal, for which there is simply no evidence and which is preposterous on its face.

In the end, the committee found that the evidence was overwhelming, establishing by clear and convincing evidence that the rules of the House had been violated, flagrantly, I would add.

Mr. Speaker, we are much preoccupied these days, both as elected officials and as private citizens, by breaches of public trust. We may enact legislation before we recess to protect the public from unethical conduct in the corporate arena. But to state what should be obvious, each of us in this very body has weighty responsibilities in this vein as well; not to abuse those who seek government assistance through our offices and not to abuse those who work for us.

To fail to expel the gentleman from Ohio in the face of the vast evidence spread out in the record is to say that a Member can behave as he has and retain membership in this institution. That cannot be our message today.

I urge my colleagues to take the difficult action, thankfully rare, but abundantly warranted in this case, of voting for the motion to expel.

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

Mr. TRAFICANT. Mr. Speaker, in lieu of the gravity of this matter, the number of counts, I respectfully request unanimous consent of this body that an additional 15 minutes be awarded to me.

The SPEAKER pro tempore. Does the gentleman from Colorado yield for that request?

The gentleman from Colorado has yielded for debate purposes only and must yield to permit another Member to make a unanimous consent request to change the procedure.

Mr. HEFLEY. Mr. Speaker, I will yield for that request. That is not passing judgment on the motion.

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

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. TRAFICANT) is recognized for an additional 15 minutes.

Mr. TRAFICANT. Ladies and gentlemen, you heard on the news, the first national news story that I was involved in, a murder scheme by contract. It made national headline news. The woman was a friend of mine. She was so distraught, she called me every name in the book by phone. I didn't know what she was talking about.

She later called and recanted, after they put her in protective custody for 8 weeks, paid $800 to keep her dogs in Kentucky, and then brought her to the grand jury twice. And when she said that JIM TRAFICANT committed no crimes, then they demeaned her. But through the process they told her, to ensure her safety, to go public.

Now, if you are a juror and you have heard about a JIM TRAFICANT, if that isn't poisoning a voir dire, what is?

But then the next one that was in the national news was the $150,000 barn addition. Now, I am an old sheriff. Finally a man with a conscience, Henry Nimitz, sees me at a restaurant and comes up and says, ''JIM, I want to apologize. They were going to indict me, take away my business, ruin my life. My attorney said, why do you have to spend a half a million dollars? Tell them what they want to hear. I did, and I feel like a coward.''

But what he failed to recognize, I had a friend with me by the name of John Innella. I immediately went back to my office and did an affidavit with John Innella. Then the next day, as an old sheriff, I called Mr. Nimitz' girlfriend, who admitted that Mr. Nimitz called and admitted what he said to JIM TRAFICANT. So now the $150,000 barn was not brought.

Now, I am going to get right to the point. I want you to imagine there is a small army of patriots, and they are facing a gigantic army armed to the teeth. And the captain, trying to show strength, calls his assistant and says, ''Go to the tent and get my bright red vest.''

He goes and gets the red vest. He puts the red vest on, and he says, ''To show the power and courage of our people, without a sidearm I am going to carry this sword and I am going to attack the enemy, and, as they slay me, the blood will not be seen because of my bright red vest and you will be encouraged to fight for our homeland.'' He gave a banshee cry. He ran out into battle and was destroyed.

His assistant come up and he called his attendant. He said, ''Go to the tent and get me those dark brown pants.''

Think about it.

Tonight I have dark pants on. Am I scared to death? No. I will go to jail before I will resign and admit to something I didn't do.

Now, I want to go case by case. Forget all these witnesses. The judge's husband is a senior partner in the law firm that represented one of the key witnesses in my case, and that is part of now legal action relative to 28 U.S.C. 455. In addition, that person, Cafaro, I am not going to mention names, admitted giving hundreds of thousands of dollars to politicians, I might add, mostly Democrats.

He said he gave me a $13,000 bribe. Because we were at a public meeting, he said he waited until everybody left, and then we walked out together, we got in his car, and he gave me the money.

One of the attorneys handling my appeal is a bright young black attorney by the name of Attorney Percy Squire, Chief Clerk to the Chief Judge of the Northern District of Ohio, and I called him as a character witness. And he said, ''JIM, what do you want me as a character witness for? I came late to that event where you were trying to put a quarter percent sales tax together, so you could leverage funds, and I walked you out and saw you get in the green truck,'' that another witness said he picked me up in a green truck, because his had a cap on, and we had built prefab siding for a hunting hut. We went and got my truck and went and put the hut up.

And they accepted Cafaro's testimony even though he admitted to lying in a previous RICO trial. That is one count.

Richard Detore is a patriot. I didn't subpoena Detore because his attorney said, ''Don't subpoena Richard, subpoena me.'' To tell you the truth, I was a gentleman, and I did it. I felt sorry for him.

Before I was indicted, before Detore was indicted, I have a tape where he says everything on that tape that he told the Committee on Standards of Official Conduct. He said, ''JIM, I think I am living in Red China. If I didn't have two kids, I would blow my brains out.''

Now, let's look at a few affidavits. Dealing with David Sugar, just yesterday caught up with him. They said it was a half mile, Jack, across the State line, and they might now pull me into jail for being out of my district.

With one of my staffers close by to listen, Sugar admitted that he told Harry Manganaro that after the second FBI visit, because he had backdated some invoices, if he did not lie against JIM TRAFICANT he would not only be indicted, his daughter, his wife and his son would be indicted. I have a tape of Harry Manganaro. He wasn't allowed to testify, nor was the tape admitted at trial.

Now, in addition to that, a man by the name of Joe Sable told another one of my constituents three days ago, ''I feel so bad for JIM.'' David Sugar told me the same thing. And David Sugar said to me, ''JIM, I would love to help you.'' Now he is saying in the paper, ''I never said that to TRAFICANT.''

By the way, Nimitz' attorney, who I taped his girlfriend, his attorney said he admits to meeting TRAFICANT, but did nothing illegal.

Now, let's talk about Tony Bucci. His fourth plea agreement, his brother in Cuba, fled the country on a fugitive warrant, they sentenced him to 6 weeks arrest, and here is what he said. He did $12,000 worth of work at the Traficant farm, and he owned me. Now, not all of you know me personally, but if you think someone owned me, you would throw me the hell out of here.

Witnesses testified that I asked him for jackhammers because we had an old bank barn. I never owned the farm. But this old bank barn didn't have enough height for horses, Ralph. I asked him to let me use their jackhammers. He said, ''It is an insurance problem. I will send some people out.'' I said, ''I don't want you to do that. You will get too close to that old bank barn and you will drop it in.''

And that is what happened, folks. And the whole corner of that barn, Cynthia, fell down. Harry Manganaro came out and helped me prop it up. It cost my dad $15,000.

Now, guess what? Harry Manganaro came to my office yesterday and said his building happened to be firebombed last weekend and all his records are missing, including the bill, $15,000, not counting materials, to my dad who owned it.

Sinclair. Now, look. You are prosecutors. Mr. CALLAHAN made a hell of a

point. Mr. LATOURETTE, thank you. But now I want a prosecutor to think, you really want JIM TRAFICANT. They didn't allow a witness to testify, they wouldn't allow a vendetta defense. She voir dired nine of my witnesses outside the presence of the jury, didn't allow them to testify. Allowed none of my tapes. All of my tapes are exculpatory. Even on those who took the 5th Amendment, she didn't allow them.

Bucci lied through his teeth. His sister-in-law told me that there were three brothers and a brother that lived across the street from the farm and he was my friend. And she said he was sick, they took him to Florida, where he had his leg amputated; brought him back, stole the money from the family, and her children did not even attend the funeral. She submitted an affidavit and testified.

God almighty here.

Now, they said the prosecutor said, ''TRAFICANT is touchy-feely. TRAFICANT is too intelligent to be taped.'' Why did they have Sinclair tape an attorney, Madovich? Why didn't they fake body injury? I have a device, Mr. HEFLEY, that I could tape you right now, your conversation in the midst of all of this, and you wouldn't know you are being taped.

Now not one wiretap, with the number one target in the United States of the Department of Justice prosecutors. My phone wasn't tapped. They didn't want to get an admission. They didn't want to get TRAFICANT saying listen, go to it, that grand jury, do this.

J.C., everybody that testified against me would have gone to jail and lost their law license and ruined their life.

Now, a brother-in-law testifies. He said his brother-in-law told him that he was taped by someone that he had bribed a county engineer, hundreds of millions of dollars. He told his brother-in-law that he would go to jail for 10 years and lose $15 million, but all they wanted was TRAFICANT. So he told his brother he added up all the campaign contributions, which was $2,300 or $2,400 and said he bribed TRAFICANT.

You know what is amazing about this one? She didn't even allow the brother-in-law, who was subject to jeopardy, being sentenced in another case, to testify.

And guess what I did? I used the government's own picture because he said I did this, Ellen, in a barn. So I held up the picture and said, ''What barn was it?'' Couldn't identify the barn.

I said, ''What was I doing in a barn?''

He said, ''You were cleaning a horse's hoof.''

''Which one?''

He said, ''The back one.''

I said, ''Was he tied, or was he being held?''

He said, ''Someone was holding him.''

''Anybody else in the barn?''

''Oh, all kinds of people.''

''What was the floor like?''

''Can't remember. Too much manure.''

The jury even threw that one out.

I have an affidavit or a tape on every one of these counts.

Now, Sandy Ferrante testified that she personally saw me repay over a period of years money to staffers that I borrowed from them. When the IRS nailed me, they took me to civil court, and I made $2,400 a month. And that just run out, and now they are going to put me in jail for 12 years, take everything that my wife and I owned, and I never owned that farm.

I will go to jail, but I will be damned if I will be pressured by a government that pressured these witnesses to death to get a conviction on a target, the number one target in the country.

Jim Kirsham, who was an FBI-paid special agent, she would not let him testify, said, ''If you get us anything on TRAFICANT, we will build a monument to you.''

I got an affidavit from a guy just sent to me from Canada that I helped in a case where 11 Chinese were arrested, and he said, ''I want to thank JIM TRAFICANT publicly,'' and they said, ''Stay away from TRAFICANT. Don't mention his name. We are going to get him.''

I had an FBI agent that compromised one of my constituents under mental instability, desperately trying to save custody of her child, compromised her into sex. She said, ''Jim, he didn't throw me to the ground. I don't want my 87-year-old mother to know about it.''

FBI agent Anthony Speranza. I will be damned if someone is going to rape one of my constituents.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE.

The SPEAKER pro tempore. The gentleman will suspend.

The gentleman will avoid profanity or indecent language.

Mr. TRAFICANT. How much time do I have left?

The SPEAKER pro tempore. The gentleman has 30½ minutes remaining.

Mr. TRAFICANT. I read an affidavit of a Scott Grodi. He sat through the whole trial. I would like your attention. I got this affidavit today, about an hour before I came here. He was released two days before the trial, his aunt died. He said he wanted to finish. I thought we had it resolved for the U.S. Marshals to take him so he would be a pallbearer. When he came back, he was dismissed.

He didn't put in his affidavit, Cynthia, but you can write and talk to him, John Grodi, Scott Grodi. He said he knew the prosecutor wanted him out. He said, ''I knew JIM TRAFICANT was innocent.'' He said, ''I could see how he impeached their witnesses and how they were lying.''

Now, Mr. BERMAN said that there was a recant by Mr. Glaser. This is today's newspaper just faxed to me. Mr. Glaser said he did not recant, and, on the evidence, he couldn't see himself convicting JIM TRAFICANT now.

Mr. Grodi said the woman next to him also felt I was innocent. I tried to get an affidavit from her. Her attorney informed us that she was afraid to get involved. Now, folks, if she had something good to say about the government, would she be afraid?

Look here, that Cafaro Company and that Laser, I saved them with a $4 million appropriation. Thank you, Bill Young. But most air flights miss on their airports, and that technology is already used on our submarines and our naval aircraft carriers. And the only deal I have with Cafaro is bring those jobs, Ellen, and bring those headquarters from Manassas, and screw Frank Wolf.

I have helped everybody in my district and every one of these people, yeah. I did not even like some of them. But when they had 150 employees and got a contract for a highway that hired another 200, I had a 22 percent unemployment rate. Did I go to bat for them? Yes. Did I write letters to the Secretary of State? Yes. Did I write letters to the Secretary of Commerce? Yes. Secretary of Labor? Yes. Department of Transportation? Yes.

But here is where I am at tonight. I have been pressured for 20 years. Now, in 1996, read this. ''Dear Sheriff, after watching your deal in Washington and listening to the courageous admission of Mr. Detore concerning Morford pressuring him, I decided to come forward. Mr. Morford pressured me to lie about you in front of a grand jury in 1996. I would not lie. I am proud now that I did not lie after hearing Mr. Detore. Enclosed is my truthful affidavit. You can see it any way you wish.''

Here is what they wanted Mr. Detore to say, he was outside the door and heard me and Cafaro make a bribery deal. What Mr. BERMAN didn't mention is I paid $10,000 for cars that didn't run, and Mr. Cafaro sold these cars made in Youngstown, the whole company, for $1. They are considered worthless. He owed me money, never gave me the titles. Flying Members of Congress around, getting Senators' girlfriends' gifts.

But you get out of jail free by getting the man right here.

Here is the problem in America, and you must take America back. And I am running as an independent, and don't be surprised if I don't win behind bars.

The American people are afraid of their government. Why are we afraid of our government? Now, I want you to listen to this. Bob, they didn't bring one FBI or IRS investigator who investigated me to the stand so I could cross-examine them. They brought a 30-year veteran from Philadelphia, Mr. CALLAHAN, he had seven trips, spent 40 days, a quarter of a million dollars, and all he did was add up the numbers the prosecutor gave him. And said he did no investigation. When he left, he was so confused he walked into the edge of the jury edge, right in the sore spot.

The other one was an FBI rookie. Now, listen carefully. When it come to fingerprints, the judge smiled like a fox. She dismissed the jury. The prosecutor says, ''Your Honor, we have no

fingerprints of the defendant.'' One thousand documents. And listen to this. He said the one time I gave him an envelope of four, five, whatever thousand, and he took it immediately to the FBI guy who sent it to the lab.

Now, I am an old sheriff. I want to get TRAFICANT? I steam that thing open, I fix a few bills, say, ''Look, you tell TRAFICANT you don't want to go any further. You are not going to hurt him. When you come out of that restaurant, just have that damn money on him.''

What I am trying to tell you, there is no physical evidence. And when they talk about this Sinclair, $2,500, they fail to mention that he had five accounts. And every time he took 2,500 out of one, 2,500 went into another one. And after he left my employment for 22 months, $2,500 didn't go into the other account. And while he was in my employ, he said he earned $50,000 from me and $50,000 from the government.

□ 2100

He bought a $300,000 house, a brand new Buick van, rented a new car for $300 month and spent $60,000 on advertising. They went back 15 years on a horse transaction I had in Uhrichsville, Ohio, George Hooker. They could not find one citizen to say JIM TRAFICANT bought a pencil for cash. Now look, if you drink five gallons of Gatorade, you are going to expend five gallons of Gatorade somewhere in one of these restrooms. You know what you have before you? We are getting to the point where a RICO case is going to be brought against a group of housewives for conspiring to buy Kellogg's cereal.

I am prepared to lose everything. I am prepared to go to jail. You go ahead and expel me, but I am going to tell you what, Mr. LATOURETTE was right about Salvati, but do you know what was mentioned of Mr. Detore? Do you know what JIM TRAFICANT said about Janet Reno? The administration wants him out. Now, I said this on radio and I am on the House floor. I am going to say it to you right now. I called Janet Reno a traitor and I believe in my heart she is.

I believe Monica and Henry Cisneros were not that important, but I think that Red Army Chinese general giving money to the Democrat National Committee was an affront to our intelligence, and now I am going to tell it like it is. The Republicans want a permanent trade status with China. You let it slide. Democrats did not want Clinton and the party hurt. You let it slide. And what you let slide was the freedom of the United States of America. And I called her a traitor.

And Janet Reno, if I do not go to jail, I will be in Orlando August 15 and you are not going to be elected to any damn thing. Nobody should fear our Government.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HANSEN). The Chair would caution the gentleman to please avoid the use of profanity or indecent language, and the gentleman should address the Chair and not other Members by their first names. The gentleman may proceed.

Mr. TRAFICANT. I apologize. As a fashion leader, it is tough for me at times to comport with some rules.

It was brought up and said, JIM, why don't you go to Speaker HASTERT? HASTERT owes you. I didn't go to the Speaker. I didn't vote for the Speaker to get something from the Speaker. Now, you go ahead and expel me, but you ran this place for 50 years, Democrats, and you made the IRS and the FBI and the Justice Department so strong, our people are afraid to death of them.

I want to thank Bill Archer and the Republican Party, and that is why I voted for you, Speaker. For 12 years I tried to change the burden of proof in the civil tax case and protect the American people's homes from being seized, and now, I want to give those statistics because they are relevant to my case and the IRS hates me for it.

The law was passed in 1998, the Traficant language wasn't in, Clinton threatened to veto it. Ninety-five percent of the American public wanted the Traficant bill. The Republican Chairman, Bill Archer, called me and said he talked to the Speaker and leaders and said, JIM, we are going to put your burden of proof in and we are going to put your language on seizure in the conference, and wrote me a letter giving me the credit.

Now, let me give you the statistics that I am proud of and I want to share, because this may be the last time on the floor, and I expect it. The year before compared to the year after the law, wage attachments dropped from $3.1 million to $540,000. Thank you, Mr. Archer. Thank you, ROB PORTMAN. Property liens dropped from $688,000 to $161,000, but now let us think of our communities. Seizures of individual family-owned homes dropped from 10,067 to 57 in 50 States when they had to prove it, and you guys did it. Congratulations.

I want to fight these people. I want to fight them like a junkyard dog. They tied my hands behind my back and that first vote was 7–5. I am not going to get into some of the personal dynamics, but there were some people that Mr. Grodi told me that were predisposed to vote against me before that case started, and that upset him. By the way, one of the jurors said, it is unfortunate he got caught, but most of those Members of Congress are crooks anyway. I don't think you are crooks. I never ripped off Mr. SKELTON.

I have a lot of Hispanics mad at me, and I think Ms. SANCHEZ is a great member, but yes, I voted for Mr. Dornan because I thought we set an illegal precedent by allowing possible illegal immigrants to vote in a Federal election, and I voted with Mr. Dornan. And I am sorry, but that's the way it is. Now, since then I think you have an been an excellent Member. If you have been offended by this, I am sorry.

I also want to say this. I urge you to put our troops on our border. I think anybody who jumps the fence shouldn't be made a citizen, they should be thrown out. And you are going to be dealing with homeland security, and I am saddened in my heart I can't vote on it.

Now, I don't know how much time I have left, but show me one piece of physical evidence.

Mr. Detore, by the way, spent $600,000 and is now without an attorney. His last attorney he paid $239,000 who went to the judge without him knowing and asked to be withdrawn from the case, because Richard Detore would not give him $100,000. He had already given him $239,000, and all he did was submit 3 motions for him. And one thing rang true: Every one of the witnesses that testified; significant, they had some witnesses scared to death. The key witnesses all would have gone to jail, lost their license, wives should have been indicted, and you know what? Back to my valley. I don't blame any one of you.

I think if they had something on Mr. Detore, who knows what to God he would do, but I am going to say this. Someone who impugns the character of Mr. Detore is, in my opinion, violating the sanctity of this House. Because he said, I checkered my wife and I will not lie. And if they indict me, go ahead and indict me.

They talked about a Corvette that cost $1,000. It was supposed to be $1,000, but ended up being $6,000 that I paid for it. They said, why did you pay so much for the Corvette? I rented a Corvette because I wanted to get a car to drive to visit Mr. COOKSEY to go hunting and to speak at one of his events. But he got tied up 3 weeks later, and I had the car for 3 weeks, and when I drove back, the license plate expired in 30 days, got picked up on 395.

I ended up paying $6,000 for a car. I paid for it and got the records. Everything I paid was by check or a credit card. No cash in 20 years. My God, if you don't give me a right to appeal a judge whose husband was taking his law firm fees from the Cafaro company, who is the predicate act of the RICO, then who is our last bastion of appeal if it is not the people's House?

Mr. Speaker, I voted for you; I thought you were better for the country, period. I thought the Republicans' program was better. Mr. GEPHARDT, if you're here, I apologize for my comments; it was in the heat of battle. If you had been there, I probably would have hit you too. But I apologize for those words.

With that, with that, I retain the balance of my time, or however you word it. How much time do I have?

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Ohio (Mr. TRAFICANT) has 14½ minutes remaining.

PARLIAMENTARY INQUIRY

Mr. TRAFICANT. Do I go last, Mr. Chairman? Parliamentary inquiry.

The SPEAKER pro tempore. Would the gentleman state his inquiry?

Mr. TRAFICANT. Mr. Speaker, do I go last, since I am the subject of the demise?

The SPEAKER pro tempore. The gentleman from Colorado (Mr. HEFLEY) has the right to close.

Mr. TRAFICANT. Mr. Speaker, I ask the gentleman from Colorado (Mr. HEFLEY) as a gentleman to relinquish his right to close, surrender to me and give me his time.

Mr. HEFLEY. Mr. Speaker, I will hold that decision in abeyance until we get down to that time. I will take it into consideration.

Mr. TRAFICANT. Mr. Speaker, if the gentleman has any time left.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Colorado (Mr. HEFLEY).

Mr. HEFLEY. Mr. Speaker, I yield 5 minutes to the gentleman from Washington (Mr. HASTINGS), who is the chairman of the Investigative Subcommittee in this matter.

Mr. HASTINGS of Washington. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, this is a day that each of us hoped would never come, and we pray that it will not come again. Simply put, there is absolutely no satisfaction in judging one of our own. But the Constitution makes clear that we are the only ones who can judge a fellow Member of Congress in cases such as Mr. TRAFICANT.

It is certainly difficult for me, as I am sure it is difficult for my fellow members of the Committee on Standards of Official Conduct, to recommend the expulsion of a colleague. Our recommendation in this matter is based solely on the facts as we know and understand them. This recommendation is one that I know the entire committee took very seriously.

My only responsibilities in this matter were twofold. First, I served as chairman of the Investigative Subcommittee. Along with 3 of my colleagues, our responsibility was to examine the evidence from Mr. TRAFICANT's trial in Cleveland, Ohio, and to determine whether there was ''substantial reason to believe'' that violations of the House rules occurred. At this point, Mr. Speaker, I would like to thank each of my colleagues on the subcommittee for their service and their support during this long and painstaking investigation.

My cochair, the gentlewoman from California (Ms. LOFGREN), the gentleman from Mississippi (Mr. WICKER), and the gentleman from Georgia (Mr. LEWIS) should all be commended for the fair and even-handed way that they carried out this difficult assignment that none of them sought.

Mr. Speaker, on the Investigative Subcommittee, our role was similar to that of a grand jury in that our threshold of substantial reason to believe is lower than the clear and convincing evidence threshold used by Chairman HEFLEY's Adjudicatory Subcommittee.

We were charged to review the evidence presented at trial and then make our determination regarding any possibility of violation of the Rules of the House. I should emphasize that we were not simply to accept the verdict of Mr. TRAFICANT's trial at face value, nor were we to base our recommendations on that verdict.

By a unanimous, bipartisan decision, the vote on the subcommittee concluded that in fact, it had ''substantial reason to believe'' that the Rules of the House were violated, and this the next phase, the adjudicatory phase, should move forward.

Now, my second responsibility was not as the whole committee had or the adjudicatory committee; my second responsibility was to determine the appropriate sanction in the event that the adjudicatory phase was so warranted. This part, I must say, was very, very difficult, difficult because measuring Mr. TRAFICANT's transgressions against past transgressions by other Members, then determining the appropriate sanction is, by far, far from a black and white exercise. But, the Constitution assigns us this responsibility, and to us alone, and so we proceed.

After considering all of the evidence, I concluded that Mr. TRAFICANT's offenses were so serious and so purposeful that expulsion from the House is the only appropriate sanction.

□ 2115

So with a heavy heart that is how I will vote at the conclusion of this debate, but not only for the sake of this great institution, but out of respect for the rule of law.

Mr. Speaker, if any greater good is to come from these proceedings, let us hope that by facing our responsibilities squarely we have begun to rebuild public confidence in the integrity of the people's House. Whether we like it or not, in recent years too many Americans have come to believe that holding high office means a person gets to play by different rules than everyone else. That perception has helped fuel growing public cynicism about the honesty and integrity of Congress itself. Nothing could be more dangerous to our democracy, and we simply cannot allow that perception to grow unchecked.

Here in the House of Representatives, we all know there are rules governing Members and the conduct of their official duties, and we also know that those rules must be enforced fairly, without fear or favor.

Mr. Speaker, this is a day each of us hoped would never come. Mr. Speaker, this is a very difficult time for all of us, and I know it is difficult for all of my colleagues sitting here tonight, but I think that we must vote aye on this resolution.

Sadly, when the Rules of the House are violated so willfully and flagrantly, we have little choice but to punish those who break them. For, by their actions, Members who violate the rules undermine not only our own internal order here in this great institution, but the very foundation of public trust and confidence on which the people's House must always rest.

Today, it's up to us to repair that foundation.

Mr. BERMAN. Mr. Speaker, I yield 2¼ minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, I was the ranking member on the investigative subcommittee serving with the gentleman from Washington (Mr. HASTINGS), examining the testimony and evidence presented during the trial.

The subcommittee unanimously concluded that the evidence showed that the gentleman from Ohio (Mr. TRAFICANT) engaged in official misconduct of the most serious nature. He traded his official office and powers repeatedly for money, free labor, equipment at his farm and other things. He did so repeatedly and with several different people and companies.

He demanded and received tens of thousands of dollars, with salary kickbacks from his congressional employees. He filed two false income tax returns that failed to report more than $75,000 in income from gratuities. As I mentioned earlier, the trial lasted more than 30 days with over 6,000 pages of transcript, more than 50 witnesses called for the prosecution and 29 by the gentleman from Ohio (Mr. TRAFICANT).

We took this testimony and reviewed it, but we made an independent review of the sworn testimony and other evidence during the trial, and we unanimously decided that the gentleman from Ohio (Mr. TRAFICANT) should be charged with violation of House rules based on the evidence, not criminal charges.

There was testimony, evidence by the businessman who gave the gentleman from Ohio (Mr. TRAFICANT) gratuities, and that was supported by testimony of public servants who were pressured by the gentleman from Ohio (Mr. TRAFICANT). Eight witnesses testified relative to the kickbacks the gentleman from Ohio (Mr. TRAFICANT) received, and that testimony was also substantiated. Five employees of the gentleman from Ohio (Mr. TRAFICANT) testified as to the work they were directed by the gentleman from Ohio (Mr. TRAFICANT) to perform on his farm or boat. One employee testified that he had been there between 100 and 300 different times.

The gentleman from Ohio (Mr. TRAFICANT) repeatedly asserts there is no physical evidence of his crimes, but, in fact, there is abundant evidence, including check, bank records, memos, faxes, letters and other documents.

I would finally just say that when the gentleman from Washington (Mr. HASTINGS) and I rejoined the remainder of the committee for the penalty phase, we joined eight others with the unanimous recommendation, with great sadness, that the expulsion remedy is one that we must do. I feel very sad this evening to listen to this testimony, but I know what our duty calls us to do, and I hope that the House is up to it.

Mr. TRAFICANT. Mr. Speaker, how much time remains with all parties?

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from Ohio (Mr. TRAFICANT) has 14½ minutes remaining. The gentleman from Colorado (Mr. HEFLEY) has 6 minutes remaining. The gentleman from California (Mr. BERMAN) has 7¼ minutes remaining.

We would close in this order unless someone elects different: The gentleman from California (Mr. BERMAN), the gentleman from Ohio (Mr. TRAFICANT), the gentleman from Colorado (Mr. HEFLEY), in that order.

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

Number one, the businessman my colleague is talking about that corroborated Mr. Cafaro's testimony was Al Lang, and I did not find out until after the trial that there was a demand note from Mr. Cafaro to Al Lang to repay the money for the boat he was to buy.

Number two, that also Mr. Cafaro paid for Mr. Lang's attorney. So it was really Mr. Lang and attorney or Mr. Lang was represented by Mr. Cafaro's attorney? My God.

Second of all, the Committee on Standards of Official Conduct allowed me to subpoena one witness. I asked for 11 subpoenaed and 20 that did not need subpoenas. They finally come back and retracted. The one witness testified she personally made the loans when I could not make it to the farm. One fellow saw me make loans to the other fellow.

My colleagues had a hearsay transcript. Now I want to ask the committee, and I wish the committee would hear me. I want to know what witness the committee called to refute my witnesses or the hearsay in that transcript. Why was I willing to bring 31? Why did the judge tie my hands behind my back?

The point I am making to my colleagues is I am not unique. I know why I was targeted. I do not need American history to beat them, and I was an embarrassment, and then I brought home John Demjanjuk, the infamous Ivan the Terrible. I was labeled an anti-Semite. No one would look into his case. The headlines in my paper said Nazi sympathizer. What they did not say when the family came in, they came to me last because no one would listen to him because they said ''the case was too sensitive.''

I said come on in and what they also did not print, I said, if your dad has been convicted and I will go over and pull the switch, but whether he was Ukrainian or Jew made no difference to me. I literally, through my investigation, discovered the evidence that proved that Ivan the Terrible was 9 years older, taller, black hair, long scar on neck and his name was Ivan Marchenko and then presented a picture to Israeli Supreme Court, and for all of the people calling me anti-Semite, let me tell my colleagues something. I never voted for a foreign aid bill until we had a surplus, and then I voted for aid, and I support Israel, a democratic State, surrounded by a cluster of monarchs and dictators who have held us hostage for oil, but he was not Ivan, and the Israeli Supreme Court taught me something that I think Congress should know. They literally delivered him to me on an El Al flight to take home. Congress would not even hold a hearing in light of my compelling evidence that the Israeli Supreme Court freed him, because it was too sensitive.

What has happened to us, Congress? Am I different? Yeah. Have I changed my pants? No. Deep down my colleagues know they want to wear wider bottoms; they are just not secure enough to do it. I do wear skinny ties. Yeah, wide ties make me look heavier than I am and I am heavy enough. Do I do my hair with a weed whacker? I admit.

Take into consideration what my colleagues are doing. The Democrats, and I agree with the gentleman from Wisconsin (Mr. OBEY), and I have had my run-ins with him, probably no one brighter in this whole place.

Mike Myers, an FBI undercover agent posing as an Arab sheik gave him $250,000, captured by videotape, and my colleagues let him go till after the break. The two Members who violated a 17-year-old page boy and a 17-year-old page girl, which is rape in every State, were not expelled.

If my colleagues know law enforcement and they have got a target, they want a confession, and when they cannot get that confession, they want an admission, and I am telling my colleagues this right now. They have more tapes on me than NBC. I did nothing wrong. That is why go ahead and expel me, and I believe this judge is so afraid of what is resonating throughout America, who believes that they should not have to fear their government and that Congress is the last hope to take it back, and I am saying to the Speaker, take it back.

No American should fear their government and this guy does not. I am ready to go. Expel me. It will make it easier for them to really jack me good.

But do my colleagues know what they will have done? They will have taken the standards of a RICO case down to less than a DUI where a person needs a .10 to get a conviction.

Let me tell my colleagues what happened to me early Saturday morning. I was up in Portage County, a new part of the district of the gentleman from Ohio (Mr. STRICKLAND), and I did not run against the gentleman because I thought I would beat him easily, and I wanted to give him a break.

I left my car, and at 2:30 in the morning I pulled out, and I got pulled over by a township police car and a county sheriff. The window does not work on the car, so I opened up the door. They could not see me but said, ''Mr. TRAFICANT, can we see your registration and license.'' It had dealer tags on it. I did. He asked me to get out of the car.

They asked me to walk around the back of the car. They asked me to do my ABCs. They asked me to do this with all four fingers on both hands, and they asked me to stand and put my foot in front of my right, take nine steps, stop, turn and return. Then they asked me to lift my right knee, with my left foot on the ground and count to 30. Try that. Then they said reverse, put your right foot on the ground, pick your left knee up, count to 30, and I did that, and they said would you mind a breathalyzer. I said knock yourself out. I was .001.

Here is what I asked them: Did the FBI tell you that was my car and ask you to see if you can get a DUI on me? They looked at each other real funny, and I cannot tell my colleagues exactly what I told them because of House decorum, but I told them if I find out it is an FBI agent that did it, I will tear his throat out, and if they lied to me, I would come back to them and tear their throats out.

They are not going to frighten me. I am ready to go to jail. I will go the jail before I admit to a crime I did not commit, and there was never any intent to commit a crime, and when they start bringing letters that my colleagues send to Cabinet members trying to help their people, there is a dangerous precedent set in U.S. v. Traficant.

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

Mr. HEFLEY. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT), a member of the committee.

(Mrs. BIGGERT asked and was given permission to revise and extend her remarks.)

Mrs. BIGGERT. Mr. Speaker, it is with sadness and regret that I rise today to express my support for H. Res. 495 in the matter of JAMES A. TRAFICANT, JR. Let me make this very clear. No Member of Congress ever wishes to sit in judgment of a colleague, least of all a colleague as colorful and as indomitable as the gentleman from Ohio (Mr. TRAFICANT).

Yet at the same time no Member ever wishes to see the rules of this institution broken or the standards of its Members brought low. Many Americans who have read or heard of the gentleman from Ohio's (Mr. TRAFICANT) conviction in Federal court wonder why we in the House have bothered with our own investigation and hearings.

□ 2130

They ask, ''Why go through all of that? A jury found him guilty on 10 felony counts.'' They find it hard to find to understand why expulsion from the House would not be automatic once a jury finds a Member guilty of felony offenses in a court of law. The answer, quite simply, is found in the Constitution. Our Founding Fathers left it not to the Judiciary nor to the executive branch to determine when, how, or if expulsion of a Member is warranted.

They left it to us, the Members of this body.

It falls to us today to look at three things: One, the statement of violations of our own code of official conduct, drawn by our own investigative subcommittee; two, the evidence presented at our own adjudicatory hearing by our own subcommittee counsel and the gentleman from Ohio (Mr. TRAFICANT); and, three, the findings and sanctions recommended by our own full Committee on Standards of Official Conduct.

If my colleagues will look at these three things, they will conclude that there is clear and convincing evidence that the violations occurred and that the resolution should be approved by this body today.

Mr. Speaker, I would like to thank our chairman, the gentleman from Colorado (Mr. HEFLEY), and our ranking member, the gentleman from California (Mr. BERMAN) for their outstanding work on this resolution. Throughout the long weeks and days leading up to and including the hearings, they showed the greatest integrity, patience, and fairness, often going out of their way to give the gentleman from Ohio (Mr. TRAFICANT) every opportunity to counter the clear and convincing evidence presented against him.

I salute my colleague, the gentleman from Ohio (Mr. LATOURETTE), for his outstanding work.

Mr. BERMAN. Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio (Mrs. JONES).

Mrs. JONES of Ohio. Mr. Speaker, I rise today in support of the motion to expel our colleague, the gentleman from Ohio (Mr. TRAFICANT). I know, too, that many of my colleagues are questioning the propriety of expelling the gentleman from Ohio, something that has not happened in this House in some 40 years. And Members are questioning it notwithstanding the fact that a jury was convinced beyond a reasonable doubt of his guilt, the highest burden of proof required in our legal system, and notwithstanding the fact that the Committee on Standards of Official Conduct, who was vested and duty bound by this body to review the conduct of our colleagues, has reviewed the facts and determined that his conduct was of such nature that it violated the House rules of conduct, and that it was of such character and so serious that it merited the highest sanction from the House of Representatives.

Let me assure my colleagues that when we try cases in criminal justice courtrooms, we often talk about a subject called a red herring. Now, today, we have had an opportunity to hear from our colleague, the gentleman from Ohio. In fact, the wonderful thing about our justice system and the hearings that we have had here in the House are that they were public. We had an opportunity to hear the presentation or the defense presented by the defendant.

I will not go through all the red herrings, but we talked about: ''I paid for the car, I never owned the farm; everybody would have gone to jail or lost his license; I repaid the money to my staffers; do not be surprised if I win, I will win behind bars; 1,000 items; no fingerprints; hearsay transcripts; when the play is cast in hell, none of the witnesses in the trial will be angels; you cannot believe that the credibility of some of these witnesses could be better if they were someone else.

Forget the witnesses for a moment. Forget that the judge's husband was a member of the firm, and forget that his clerk was the chief clerk for a chief justice of the Supreme Court or other trial court. We have a duty. We have an obligation. The public is watching us, and they are saying, ''House of Representatives, you have a duty. You have an obligation as elected Members of Congress to take into consideration what has been presented to you by this Committee on Standards of Official Conduct.''

It is not easy. When I was a judge, I was required to sentence somebody to death. And people used to say, oh, he should get the death penalty. But it was not that easy to stand up there and say I sentence him to death. And it is not easy today, my colleagues, but it is our job. It is our duty. Uphold the integrity of this House of Representatives and vote to expel the gentleman from Ohio (Mr. TRAFICANT).

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

Number one, to the gentlewoman from Illinois (Mrs. BIGGERT), I say that I am sadder than you are.

To my colleague from Ohio, after the public hearings, 80 to 90 percent of the viewing public supports my position. Number three, all the witnesses that testified against me at trial were either felons or would-be felons, with no physical evidence.

The gentlewoman is a very astute legal criminal mind. I just want her to think before she votes.

In the case of staff, they said one afternoon I invited them down to the boat, they did some sanding, it was a bonding thing, and they drank beer. The ones that came to the farm, came for the weekend, voluntarily; wanted to use it as a health spa.

One guy that said he was there 300 times, I had it before the trial, but I heard he took $2,500 to bribe a judge in a DUI case. I thought they had no evidence, and I did not even question him on it. I have a tape from one of his fellow trustees that I will submit to the committee. His name is Jim Price, Weathersville Township, relative to the testimony of that staffer that I will not mention.

Look, show me the beef. Come up with a transcript. They could not even bring an FBI or IRS investigator to the stand, they are so afraid of me. And I am going to tell my colleagues something, and they are not going to believe it. My hands tied behind my back, I believe in my heart I won that trial, and that trial was manipulated. I would not rush in haste.

Now, if my colleagues do not expel me tonight, I am convinced this judge is going to put me in jail. She cannot stand my guts. And she is deathly afraid of me getting on national TV, because it is beginning to resonate around the country about how people do fear our government. And why do we?

I expect my colleagues to expel me. It is going to hurt me when some of you do.

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

The SPEAKER pro tempore (Mr. HANSEN). Does the gentleman from Colorado have any other speakers?

Mr. HEFLEY. Just this gentleman, and then myself to close.

The SPEAKER pro tempore. Does the gentleman from California have additional speakers?

Mr. BERMAN. One additional member of the committee and myself.

The SPEAKER pro tempore. The gentleman from Colorado (Mr. HEFLEY) may proceed.

Mr. HEFLEY. Mr. Speaker, I yield 2 minutes and 45 seconds to the gentleman from Missouri (Mr. HULSHOF), who is a member of the committee.

Mr. HULSHOF. My colleagues, let me first thank you all for your attention and presence here. The gentleman from Minnesota (Mr. OBEY) pointed out to me during the vote that back in 1980, as this matter was being discussed, only a handful of Members were here for that debate over the expulsion of Mr. Myers. And so your continued presence here is a testament to this institution.

The gentleman from Ohio has referenced the lack of evidence and the quality of evidence. Is there anybody in this Chamber who believes that the gentleman from Ohio (Mr. TRAFICANT) could be captured incriminating himself on tape? Should we, in this case or any other case, reward a wrongdoer because he has the wherewithal to avoid being captured in the act? Shall a clever criminal who has enriched himself at taxpayer expense be further enriched because he almost avoided detection?

I paraphrased comments made by a member of the Committee on Standards of Official Conduct back in 1980 in that matter. The gentleman from Ohio (Mr. TRAFICANT) has violated the House rules not only as an individual who happened to be a public servant, but as a public servant who traded upon that very elected office.

There is no one who disputes that the gentleman has fought aggressively for his constituents in the 17th Congressional District of Ohio. I daresay that 435 Members who come here every week do the same for constituents back home across this land, and yet we come here in the public good, not to enrich ourselves for private profit.

To my colleagues who were sworn in in this Chamber on January 7, 1997, in the 105th Congress, what an interesting tenure we have had. Our first vote for Speaker of the House, who had an ethics cloud hanging over his head; our last vote as freshmen members on the impeachment matter of a sitting president; and here we are again tonight with the lens of history trained upon us.

There are some who have been fretting about this vote and that we are debating it in prime time, of all things. Well, my colleagues, I believe that tonight is going to be one of this institution's finest hours.

To the gentleman from California (Mr. ISSA), I absolutely agree with his statements on the previous motion. It should take extraordinary wrongdoing to override the wishes of a voter in a Congressional district. I believe that. And I believe this is one such case.

Sometimes when we walk in darkness, we are overcome with the brilliant light of truth. A little over 300 days ago, we assembled as a body on the darkest day of our Nation's history, and we sent a glimmer of light to the people we represent that you can extinguish thousands of American lives, but you will not extinguish the American spirit. And yet when you destroy that fragile bond of trust between the elected and the electorate, expulsion is the only appropriate remedy, regrettably, and I ask for that vote.

Mr. HEFLEY. Mr. Speaker, I do have some additional comments I will give at the appropriate time, but I would like the gentleman from Ohio (Mr. TRAFICANT) to know at this time that I am going to waive my right to close in this serious matter and give him the right to close.

The SPEAKER pro tempore. The gentleman is allowing the gentleman from Ohio (Mr. TRAFICANT) the right to close?

Mr. HEFLEY. Yes, Mr. Speaker. So that when the gentleman from California (Mr. BERMAN) is through, I will make a few comments.

Mr. TRAFICANT. Mr. Speaker, would the gentleman from Colorado yield me the balance of the time he does not use?

Mr. HEFLEY. I will be happy to yield the balance, if I do have some left, but I do not believe I will.

Mr. BERMAN. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from California has 4¾ minutes remaining.

Mr. BERMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Speaker, I have never spoken to my colleagues from this mike, that I can remember.

Mr. Speaker, we do not enjoy what we are doing today, but I am proud to follow my colleague, the gentleman from Missouri (Mr. HULSHOF). When we have to discipline ourselves, it is a task we try to avoid. We avoid it to give due process to the accused, but in all reality, we really do not want to air our dirty linen in public. We really do not. Nobody does. Because we are a family, and families do not do that.

With that said, I could not be more proud in my four of five terms here. I did not want the Committee on Standards of Official Conduct, but I am proud to serve on it with the gentleman from Colorado (Mr. HEFLEY) as the Chair and the gentleman from California (Mr. BERMAN) as our ranking member. This is not something that any of us wanted. In fact, we would resign tomorrow, except it is our duty.

This is the people's House and we have to do our job. If we cannot remove a Member of Congress who has been convicted of 10 felonies, including using his office for personal gain, we risk losing the faith and trust of the American people that we have.

As a duly elected Member from the 17th district of Ohio, I do not fault the gentleman from Ohio (Mr. TRAFICANT) for doing everything he can to bring economic assistance to his constituents. As my colleague from Missouri said, we do that every day; 434 of us try to do that, and we work hard for our constituents, for jobs and economic development. The line of legality is crossed when we help ourselves for our benefit instead of helping our constituents for their benefit.

The gentleman from Ohio crossed that line when he worked for a company to get road contracts for his district, and then that company did improvements on his own private property. That is not lawful. And when he helped a family move an imprisoned loved one closer to home and then provided a list of improvements to be made to his properties, that was illegal. When he created a system of kickbacks by his congressional employees, that was outrageous and unlawful. When he helped a company receive Federal tax dollars that we vote for for worthwhile projects, and then they accept benefits to use personally, that was illegal.

□ 2145

Mr. Speaker, I know I am out of time, but we need to do our job, and we need to make sure that we remember we are only here temporarily, and this is the people's House.

These examples of violations of House Rules and U.S. Statutes by Congressman TRAFICANT clearly demonstrates a continuing abuse of his congressional office. That is why the Committee on Standards of Official Conduct voted unanimously to expel him. Congressman TRAFICANT is our colleague, and I do not like having to list his past mistakes, but I value the honor of this body above all else. Our colleague has brought disrespect on his House by his violations of law and for that reason, he must be expelled.

Mr. Speaker, Congressman TRAFICANT has been judged guilty by a jury of his peers in Ohio and a Committee of his peers in the House of Representatives. I urge my colleagues to show the American people that this body believes in the "rule of law" and vote to expel Congressman JAMES TRAFICANT.

We should all be appalled by this activity—we should not continue the image that elected officials are crooks who get special treatment. We need to act on this immediately—well after conviction but before sentencing next week.

The SPEAKER pro tempore (Mr. HANSEN). The gentleman from California (Mr. BERMAN) has 2¾ minutes remaining.

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

Mr. Speaker, the gentleman from Ohio (Mr. TRAFICANT) is our colleague. We are involved in what is in a certain way a profoundly anti-democratic decision, one contemplated by our Founding Fathers, but anti-democratic because we are talking about expelling a Member who was elected for a term of office before that term is completed.

He is a friend to many. He has an irrepressible nature that all of us coming from a lot of different backgrounds have known about for a long time. In many ways he has been an effective colleague for the causes and issues that the gentleman believes in. But this body in its wisdom created a committee. The leadership of both sides appointed Members who have spent an incredibly large amount of time sifting through the evidence relating to four counts of conspiracy to commit bribery, each of them involving totally separate transactions with totally different witnesses; illegal gratuities under our bribery statute, filing false tax information, two separate counts; obstruction of justice.

Our committee, involving an equal number of Democrats and Republicans, covering an incredible range of philosophies and ideologies, going from people who barely new the respondent to a gentleman who has termed himself publicly as his closest friend in this House, have applied our rules to the facts as we see them and unanimously recommended expulsion. No one did it easily. For some, it was an incredibly difficult conclusion to reach.

Mr. Speaker, I think in the context of this process and our obligation to the American people, we are compelled to vote "aye" on the resolution to expel.

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

The SPEAKER pro tempore. The gentleman from Colorado (Mr. HEFLEY) has 1¼ minutes remaining.

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

Mr. Speaker, the gentleman from Ohio (Mr. TRAFICANT) is a Member with whom many of us have served for years and years. Many of us are very fond of the gentleman from Ohio (Mr. TRAFICANT); but at times like these we are required to set aside those personal feelings, those feelings of friendship, and fulfill this weighty responsibility.

As chairman of the Committee on Standards of Official Conduct, it is my duty to ask the House of Representatives to expel the gentleman from Ohio (Mr. TRAFICANT).

I want to thank the members of the committee that I have served with through this. They serve us well. I want to thank our outstanding staff. They serve us well. And I particularly want to thank Members for being here for almost 3 hours. It is seldom that I have seen almost every Member of the House of Representatives on the floor for 3 hours. What that tells me is that Members take this as seriously as I do and as the rest of the committee does, and thank you for that. It is important that we do not take something like this lightly. We do not take it lightly.

Mr. Speaker, if I have any time remaining, I yield it to the gentleman from Ohio (Mr. TRAFICANT).

The SPEAKER pro tempore. The gentleman's time has expired.

The gentleman from Colorado (Mr. HEFLEY) has relinquished to the gentleman from Ohio (Mr. TRAFICANT) the right to close. The gentleman from Ohio has 3 minutes remaining.

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

Mr. Speaker, 20 years and not one tape. Mr. Prosecutor from Missouri, am I that good? Come on.

$1.3 billion in that budget that I brought back, much of it from the help of the Republicans, the gentleman from Pennsylvania (Mr. MURTHA), the gentleman from Florida (Mr. YOUNG), thanks. Twenty-two percent unemployment, been under 7, and we are still hurting. I am proud of that.

He said that I took money from companies that did me favors. Look at the testimony of Susan Bucci. She said that they owed me money. I bushhogged 40 acres of their fields every year because her husband, Dan, was sick; and baled 25 acres of his hay every year for 5 years using my equipment and never charged him. She came to me when the brothers ripped her off.

You know, there is something unusual here. You did not elect me. Yes, you have the right to throw me out. My people do not want me out. There is something that was not allowed to be brought, and I give the gentleman from Colorado (Mr. HEFLEY) and the committee great respect; but ladies and gentlemen, you passed a 1967 Jury Service and Selection Plan in the Northern District of Ohio before TRAFICANT was indicted, passed a jury selection plan that was not ratified until after my indictment. They excluded people from my area that knew me and these witnesses from the jury pool.

This is not going to help me with the judge, but I think we have an aristocratic judiciary that looks at Congress like an advisory board. I think you better take that back.

Not one person who knew me or these witnesses was on the jury, and you did not subpoena one witness to validate that hearsay transcript.

Here is what I am saying to you. It is not a matter of liking me. A lot of Members do not like me because to get that $1.3 billion, I raided a lot of appropriations bills. But I want your vote. I want 145 votes and I want to be able to go up and I want to fight the Department of Justice and the IRS.

If they put me in jail, you have a very easy vote, and I predict you will. I think as a Member of Congress, I want you to think of this. There may come a time when you might get targeted.

You know what I was told? Watch what you say. You are too outspoken. Watch what you say. Shut up about the Reno case.

I am not going to shut up. I want your vote because I think my vote is your vote, and my people elected me and I do not think you should take their representative away. With that, thank you for giving me additional time, at least listening to me, and vote your conscience, nothing personal; and I hope I am back and get another $1.3 billion.

Mr. UDALL of New Mexico. Mr. Speaker, I had the honor to serve New Mexico as Attorney General. As Attorney General, I had the unfortunate task to prosecute elected officials for their violation of the law and the public's trust. Although, I accepted this duty, this was not an easy task to perform but one that had to be done. The Committee on Standards of Official Conduct has been asked to take on a difficult charge to examine whether Representative TRAFICANT violated the Code of Official Conduct while serving as a Member of Congress. And if so, whether those violations warrant his expulsion from the U.S. House of Representatives. I thank them for their service on this difficult matter.

This great body has expelled only four Members (three Members and one Member-elect) in its history—Three of whom were expelled during the Civil War period in 1861 for disloyalty to the Union and the fourth occurred in 1980 following a bribery conviction. There have been other Members who were subject to expulsion for offenses such as bribery, illegal gratuities and obstruction of justice—but rather than force the hand of the House to expel them, they took the noble way out and resigned their office. I had hoped that Representative TRAFICANT would have done the same thing, and resign his office rather than force the House to remove him. However, the current situation is before us, and we must act.

On April 11, 2002 the Committee on Standards of Official Conduct gave notice that the federal jury returned a guilty verdict in the criminal trial of Representative TRAFICANT. Six days later the Committee voted to establish an Investigative Subcommittee to conduct a formal inquiry regarding Representative TRAFICANT. On June 27, 2002 the Investigative Subcommittee transmitted to the full Committee on Standards of Official Conduct a 10 count Statement of Alleged Violations and set the stage for a public adjudicatory hearing to determine whether any counts in the Statement of Alleged Violations have been proven by clear and convincing evidence. I would like to read from the statement issued by the Committee:

"The Statement of Alleged Violations charge that Representative TRAFICANT violated the Code of Official Conduct of the House of Representatives and the Code of Ethics for Government Service through a number of means, including: Agreeing to perform, and performing, official acts on behalf of individuals and/or businesses for which those individuals and/or businesses agreed to and did provide Representative TRAFICANT with things of value; Agreeing to employ a member of his congressional district staff in exchange for $2,500 per month in salary kickbacks from the employee; Endeavoring to persuade this same employee to destroy evidence and to give false testimony to a federal grand jury; Defrauding the United States of money and property by a variety of means; Filing false income tax returns; Engaging in a continuing pattern and practice of official misconduct through which he misused his office for personal gain".

From July 15 through July 18 the adjudicatory House subcommittee heard from Representative TRAFICANT where he argued that he broke no laws and contended that the government was out to get him—the same argument he made during his criminal trial. He argued against each of the points that the Subcommittee Counsel raised and was unable to make a clear argument against the evidence raised. The Subcommittee eventually determined that he was guilty of several ethics violations and that nine of the ten counts were proven by clear and convincing evidence.

Representative TRAFICANT misused his office for personnel gain; he misused the public trust; he misused the public's money, through his conduct in receiving congressional salary kickbacks from employees and receiving personal labor and services from congressional staff while they were on congressional work time; and he misused his powerful position to persuade individuals to destroy evidence and provide false testimony to a federal jury to conceal his abuse of office.

Mr. Speaker prior to entering office we each made the following declaration:

I solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take his obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

While the power of removal is a strong measure and one that should never be taken lightly, it is one tool afforded to us by the Constitution to use on those who have violated their public trust as Members of Congress. Besides violating the public trust Representative TRAFICANT broke his solemn oath of office. He did not faithfully discharge the duties of the office, which he now serves, and because of this and the clear evidence before us he should be expelled from the House of Representatives.

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

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

RECORDED VOTE

Mr. HEFLEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 420, noes 1, answered ''present'' 9, not voting 4, as follows:

[Roll No. 346]

AYES—420

Abercrombie
Ackerman
Aderholt
Akin
Allen
Andrews
Armey
Baca
Bachus
Baird
Baker
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Barton
Bass
Becerra
Bentsen
Bereuter
Berkley
Berman
Berry
Biggert
Bishop
Blagojevich
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Borski
Boswell
Boucher
Boyd
Brady (PA)
Brady (TX)
Brown (FL)
Brown (OH)
Brown (SC)
Bryant
Burr
Burton
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Coble
Collins
Combest
Conyers
Cooksey
Costello
Cox
Coyne
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
Davis, Tom
Deal
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Fletcher
Foley
Forbes
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grucci
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hilliard
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley
Horn
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Kolbe
Kucinich
LaFalce
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Skeen
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stump
Stupak
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Visclosky
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NOES—1

Condit

ANSWERED ''PRESENT''—9

Bartlett
Bilirakis
Callahan
Ford
Hostettler
Otter
Paul
Simpson
Young (AK)

NOT VOTING—4

Bonior
Knollenberg
Stearns
Traficant

N O T I C E

Incomplete record of House proceedings. Except for concluding business which follows, today's House proceedings will be continued in the next issue of the Record.

CONFERENCE REPORT ON H.R. 3763, SARBANES-OXLEY ACT OF 2002

Mr. OXLEY submitted the following conference report and statement on the bill (H.R. 3763) to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes:

CONFERENCE REPORT (H. REPT. 107–610)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763), to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Sarbanes-Oxley Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Commission rules and enforcement.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Sec. 101. Establishment; administrative provisions.
Sec. 102. Registration with the Board.
Sec. 103. Auditing, quality control, and independence standards and rules.
Sec. 104. Inspections of registered public accounting firms.
Sec. 105. Investigations and disciplinary proceedings.
Sec. 106. Foreign public accounting firms.
Sec. 107. Commission oversight of the Board.
Sec. 108. Accounting standards.
Sec. 109. Funding.

TITLE II—AUDITOR INDEPENDENCE

Sec. 201. Services outside the scope of practice of auditors.
Sec. 202. Preapproval requirements.
Sec. 203. Audit partner rotation.
Sec. 204. Auditor reports to audit committees.
Sec. 205. Conforming amendments.
Sec. 206. Conflicts of interest.
Sec. 207. Study of mandatory rotation of registered public accounting firms.
Sec. 208. Commission authority.
Sec. 209. Considerations by appropriate State regulatory authorities.

TITLE III—CORPORATE RESPONSIBILITY

Sec. 301. Public company audit committees.
Sec. 302. Corporate responsibility for financial reports.
Sec. 303. Improper influence on conduct of audits.
Sec. 304. Forfeiture of certain bonuses and profits.
Sec. 305. Officer and director bars and penalties.
Sec. 306. Insider trades during pension fund blackout periods.
Sec. 307. Rules of professional responsibility for attorneys.
Sec. 308. Fair funds for investors.

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

Sec. 401. Disclosures in periodic reports.
Sec. 402. Enhanced conflict of interest provisions.

Sec. 403. Disclosures of transactions involving management and principal stockholders.
Sec. 404. Management assessment of internal controls.
Sec. 405. Exemption.
Sec. 406. Code of ethics for senior financial officers.
Sec. 407. Disclosure of audit committee financial expert.
Sec. 408. Enhanced review of periodic disclosures by issuers.
Sec. 409. Real time issuer disclosures.

TITLE V—ANALYST CONFLICTS OF INTEREST

Sec. 501. Treatment of securities analysts by registered securities associations and national securities exchanges.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

Sec. 601. Authorization of appropriations.
Sec. 602. Appearance and practice before the Commission.
Sec. 603. Federal court authority to impose penny stock bars.
Sec. 604. Qualifications of associated persons of brokers and dealers.

TITLE VII—STUDIES AND REPORTS

Sec. 701. GAO study and report regarding consolidation of public accounting firms.
Sec. 702. Commission study and report regarding credit rating agencies.
Sec. 703. Study and report on violators and violations
Sec. 704. Study of enforcement actions.
Sec. 705. Study of investment banks.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

Sec. 801. Short title.
Sec. 802. Criminal penalties for altering documents.
Sec. 803. Debts nondischargeable if incurred in violation of securities fraud laws.
Sec. 804. Statute of limitations for securities fraud.
Sec. 805. Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud.
Sec. 806. Protection for employees of publicly traded companies who provide evidence of fraud.
Sec. 807. Criminal penalties for defrauding shareholders of publicly traded companies.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

Sec. 901. Short title.
Sec. 902. Attempts and conspiracies to commit criminal fraud offenses.
Sec. 903. Criminal penalties for mail and wire fraud.
Sec. 904. Criminal penalties for violations of the Employee Retirement Income Security Act of 1974.
Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.
Sec. 906. Corporate responsibility for financial reports.

TITLE X—CORPORATE TAX RETURNS

Sec. 1001. Sense of the Senate regarding the signing of corporate tax returns by chief executive officers.

TITLE XI—CORPORATE FRAUD AND ACCOUNTABILITY

Sec. 1101. Short title.
Sec. 1102. Tampering with a record or otherwise impeding an official proceeding.
Sec. 1103. Temporary freeze authority for the Securities and Exchange Commission.
Sec. 1104. Amendment to the Federal Sentencing Guidelines.
Sec. 1105. Authority of the Commission to prohibit persons from serving as officers or directors.
Sec. 1106. Increased criminal penalties under Securities Exchange Act of 1934.
Sec. 1107. Retaliation against informants.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act, the following definitions shall apply:

(1) APPROPRIATE STATE REGULATORY AUTHORITY.—The term ''appropriate State regulatory authority'' means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) AUDIT.—The term ''audit'' means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) AUDIT COMMITTEE.—The term ''audit committee'' means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) AUDIT REPORT.—The term ''audit report'' means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) BOARD.—The term ''Board'' means the Public Company Accounting Oversight Board established under section 101.

(6) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(7) ISSUER.—The term ''issuer'' means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) NON-AUDIT SERVICES.—The term ''non-audit services'' means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) IN GENERAL.—The terms ''person associated with a public accounting firm'' (or with a ''registered public accounting firm'') and ''associated person of a public accounting firm'' (or of a ''registered public accounting firm'') mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) PROFESSIONAL STANDARDS.—The term ''professional standards'' means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

(11) PUBLIC ACCOUNTING FIRM.—The term ''public accounting firm'' means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) REGISTERED PUBLIC ACCOUNTING FIRM.—The term ''registered public accounting firm'' means a public accounting firm registered with the Board in accordance with this Act.

(13) RULES OF THE BOARD.—The term ''rules of the Board'' means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) SECURITY.—The term ''security'' has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(15) SECURITIES LAWS.—The term ''securities laws'' means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) STATE.—The term ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(b) CONFORMING AMENDMENT.—Section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is amended by inserting ''the Sarbanes-Oxley Act of 2002,'' before ''the Public''.

SEC. 3. COMMISSION RULES AND ENFORCEMENT.

(a) REGULATORY ACTION.—The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) ENFORCEMENT.—

(1) IN GENERAL.—A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the

same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—

(A) in subsection (a)(1), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,'';

(B) in subsection (d)(1), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,'';

(C) in subsection (e), by inserting ''the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,'' after ''is a participant,''; and

(D) in subsection (f), by inserting ''or the Public Company Accounting Oversight Board'' after ''self-regulatory organization'' each place that term appears.

(3) CEASE-AND-DESIST PROCEEDINGS.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by inserting ''registered public accounting firm (as defined in section 2 of the Sarbanes-Oxley Act of 2002),'' after ''government securities dealer,''.

(4) ENFORCEMENT BY FEDERAL BANKING AGENCIES.—Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) is amended by—

(A) striking ''sections 12,'' each place it appears and inserting ''sections 10A(m), 12,''; and

(B) striking ''and 16,'' each place it appears and inserting ''and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002,''.

(c) EFFECT ON COMMISSION AUTHORITY.—Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) ESTABLISHMENT OF BOARD.—There is established the Public Company Accounting Oversight Board, to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) DUTIES OF THE BOARD.—The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;

(3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 105;

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) COMMISSION DETERMINATION.—The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after the date of enactment of this Act, that the Board is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) LIMITATION.—Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) FULL-TIME INDEPENDENT SERVICE.—Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) APPOINTMENT OF BOARD MEMBERS.—

(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) VACANCIES.—A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) TERM OF SERVICE.—

(A) IN GENERAL.—The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) TERM LIMITATION.—No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) REMOVAL FROM OFFICE.—A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3), for good cause shown before the expiration of the term of that member.

(f) POWERS OF THE BOARD.—In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 109, for the Board, and other fees and charges imposed under this title; and

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

(g) RULES OF THE BOARD.—The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the

Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) ANNUAL REPORT TO THE COMMISSION.—The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

SEC. 102. REGISTRATION WITH THE BOARD.

(a) MANDATORY REGISTRATION.—Beginning 180 days after the date of the determination of the Commission under section 101(d), it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.

(b) APPLICATIONS FOR REGISTRATION.—

(1) FORM OF APPLICATION.—A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) CONTENTS OF APPLICATIONS.—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) CONSENTS.—Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) ACTION ON APPLICATIONS.—

(1) TIMING.—The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c).

(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) PUBLIC AVAILABILITY.—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) REGISTRATION AND ANNUAL FEES.—The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) IN GENERAL.—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) IN GENERAL.—In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.

(4) ADVISORY GROUPS.—The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) INDEPENDENCE STANDARDS AND RULES.—The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) COOPERATION WITH DESIGNATED PROFESSIONAL GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.—

(1) IN GENERAL.—The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) BOARD RESPONSES.—The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) EVALUATION OF STANDARD SETTING PROCESS.—The Board shall include in the annual report required by section 101(h) the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) IN GENERAL.—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) INSPECTION FREQUENCY.—

(1) IN GENERAL.—Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

(c) PROCEDURES.—The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

(f) PROCEDURES FOR REVIEW.—The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) REPORT.—A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A), and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) INTERIM COMMISSION REVIEW.—

(1) REVIEWABLE MATTERS.—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) TREATMENT OF REVIEW.—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be ''final agency action'' for purposes of section 704 of title 5, United States Code.

(3) TIMING.—Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

(a) IN GENERAL.—The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(b) INVESTIGATIONS.—

(1) AUTHORITY.—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) NONCOOPERATION WITH INVESTIGATIONS.—

(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) PROCEDURE.—Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c).

(4) COORDINATION AND REFERRAL OF INVESTIGATIONS.—

(A) COORDINATION.—The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work

with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) REFERRAL.—The Board may refer an investigation under this section—

(i) to the Commission;

(ii) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iii) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States; and

(III) the appropriate State regulatory authority.

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation; and

(IV) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged.

(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) DISCIPLINARY PROCEDURES.—

(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) PUBLIC HEARINGS.—Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) SUPPORTING STATEMENT.—A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this title;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) RULE OF CONSTRUCTION.—No associated person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any other person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) EFFECT OF SUSPENSION.—

(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) ASSOCIATION WITH AN ISSUER.—It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) REPORTING OF SANCTIONS.—

(1) RECIPIENTS.—If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

(2) CONTENTS.—The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

(e) STAY OF SANCTIONS.—

(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) EXPEDITED PROCEDURES.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of

such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

(b) PRODUCTION OF AUDIT WORKPAPERS.—

(1) CONSENT BY FOREIGN FIRMS.—If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

(2) CONSENT BY DOMESTIC FIRMS.—A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

(c) EXEMPTION AUTHORITY.—The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) DEFINITION.—In this section, the term ''foreign public accounting firm'' means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.

(a) GENERAL OVERSIGHT RESPONSIBILITY.—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as fully as if the Board were a ''registered securities association'' for purposes of those sections 17(a)(1) and 17(b)(1).

(b) RULES OF THE BOARD.—

(1) DEFINITION.—In this section, the term ''proposed rule'' means any proposed rule of the Board, and any modification of any such rule.

(2) PRIOR APPROVAL REQUIRED.—No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) with respect to initial or transitional standards.

(3) APPROVAL CRITERIA.—The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) PROPOSED RULE PROCEDURES.—The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a ''registered securities association'' for purposes of that section 19(b), except that, for purposes of this paragraph—

(A) the phrase ''consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization'' in section 19(b)(2) of that Act shall be deemed to read ''consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors''; and

(B) the phrase ''otherwise in furtherance of the purposes of this title'' in section 19(b)(3)(C) of that Act shall be deemed to read ''otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002''.

(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a ''registered securities association'' for purposes of that section 19(c), except that the phrase ''to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title'' in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read ''to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board''.

(c) COMMISSION REVIEW OF DISCIPLINARY ACTION TAKEN BY THE BOARD.—

(1) NOTICE OF SANCTION.—The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) REVIEW OF SANCTIONS.—The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1), except that, for purposes of this paragraph—

(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) to ''members'' of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase ''consistent with the purposes of this title'' in that section 19(e)(1) shall be deemed to read ''consistent with the purposes of this title and title I of the Sarbanes-Oxley Act of 2002'';

(D) references to rules of the Municipal Securities Rulemaking Board in that section 19(e)(1) shall not apply; and

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

SEC. 108. ACCOUNTING STANDARDS.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

''(b) RECOGNITION OF ACCOUNTING STANDARDS.—

''(1) IN GENERAL.—In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934, the Commission may recognize, as 'generally accepted' for purposes of the securities laws, any accounting principles established by a standard setting body—

''(A) that—

''(i) is organized as a private entity;

''(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

''(iii) is funded as provided in section 109 of the Sarbanes-Oxley Act of 2002;

''(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

''(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is

necessary or appropriate in the public interest and for the protection of investors; and

''(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

''(2) ANNUAL REPORT.—A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.''.

(b) COMMISSION AUTHORITY.—The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933, as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) NO EFFECT ON COMMISSION POWERS.—Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) STUDY AND REPORT ON ADOPTING PRINCIPLES-BASED ACCOUNTING.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) STUDY TOPICS.—The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 109. FUNDING.

(a) IN GENERAL.—The Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 108, shall be funded as provided in this section.

(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 101(d).

(c) SOURCES AND USES OF FUNDS.—

(1) RECOVERABLE BUDGET EXPENSES.—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (i), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE BOARD.—

(1) ESTABLISHMENT OF FEE.—The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) ASSESSMENTS.—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate.

(e) ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD SETTING BODY.—The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) LIMITATION ON FEE.—The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

(1) in subparagraph (A), by striking ''and'' at the end; and

(2) in subparagraph (B), by striking the period at the end and inserting the following: ''; and

''(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.''.

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(j) START-UP EXPENSES OF THE BOARD.—From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).

TITLE II—AUDITOR INDEPENDENCE

SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF AUDITORS.

(a) PROHIBITED ACTIVITIES.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended by adding at the end the following:

''(g) PROHIBITED ACTIVITIES.—Except as provided in subsection (h), it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 101 of the Sarbanes-Oxley Act of 2002 (in this section referred to as the 'Board'), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

''(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;

''(2) financial information systems design and implementation;

''(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

''(4) actuarial services;

''(5) internal audit outsourcing services;

''(6) management functions or human resources;

''(7) broker or dealer, investment adviser, or investment banking services;

''(8) legal services and expert services unrelated to the audit; and

''(9) any other service that the Board determines, by regulation, is impermissible.

''(h) PREAPPROVAL REQUIRED FOR NON-AUDIT SERVICES.—A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i).''.

(b) EXEMPTION AUTHORITY.—The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

SEC. 202. PREAPPROVAL REQUIREMENTS.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(i) PREAPPROVAL REQUIREMENTS.—

''(1) IN GENERAL.—

''(A) AUDIT COMMITTEE ACTION.—All auditing services (which may entail providing comfort

letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

''(B) DE MINIMUS EXCEPTION.—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

''(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the nonaudit services are provided;

''(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and

''(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

''(2) DISCLOSURE TO INVESTORS.—Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 13(a).

''(3) DELEGATION AUTHORITY.—The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

''(4) APPROVAL OF AUDIT SERVICES FOR OTHER PURPOSES.—In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection.''.

SEC. 203. AUDIT PARTNER ROTATION.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(j) AUDIT PARTNER ROTATION.—It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer.''.

SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(k) REPORTS TO AUDIT COMMITTEES.—Each registered public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer—

''(1) all critical accounting policies and practices to be used;

''(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

''(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences.''.

SEC. 205. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

''(58) AUDIT COMMITTEE.—The term 'audit committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

''(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

''(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term 'registered public accounting firm' has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.''.

(b) AUDITOR REQUIREMENTS.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1) is amended—

(1) by striking ''an independent public accountant'' each place that term appears and inserting ''a registered public accounting firm'';

(2) by striking ''the independent public accountant'' each place that term appears and inserting ''the registered public accounting firm'';

(3) in subsection (c), by striking ''No independent public accountant'' and inserting ''No registered public accounting firm''; and

(4) in subsection (b)—

(A) by striking ''the accountant'' each place that term appears and inserting ''the firm'';

(B) by striking ''such accountant'' each place that term appears and inserting ''such firm''; and

(C) in paragraph (4), by striking ''the accountant's report'' and inserting ''the report of the firm''.

(c) OTHER REFERENCES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)), by striking ''independent public accountants'' each place that term appears and inserting ''a registered public accounting firm''; and

(2) in subsections (e) and (i) of section 17 (15 U.S.C. 78q), by striking ''an independent public accountant'' each place that term appears and inserting ''a registered public accounting firm''.

(d) CONFORMING AMENDMENT.—Section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is amended—

(1) by striking ''DEFINITION'' and inserting ''DEFINITIONS''; and

(2) by adding at the end the following: ''As used in this section, the term 'issuer' means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.''.

SEC. 206. CONFLICTS OF INTEREST.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1), as amended by this Act, is amended by adding at the end the following:

''(l) CONFLICTS OF INTEREST.—It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and participated in any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.''.

SEC. 207. STUDY OF MANDATORY ROTATION OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) STUDY AND REVIEW REQUIRED.—The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section.

(c) DEFINITION.—For purposes of this section, the term ''mandatory rotation'' refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

SEC. 208. COMMISSION AUTHORITY.

(a) COMMISSION REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title.

(b) AUDITOR INDEPENDENCE.—It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title, or any rule or regulation of the Commission or of the Board issued thereunder.

SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGULATORY AUTHORITIES.

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

TITLE III—CORPORATE RESPONSIBILITY

SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(m) STANDARDS RELATING TO AUDIT COMMITTEES.—

''(1) COMMISSION RULES.—

''(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

''(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

''(2) RESPONSIBILITIES RELATING TO REGISTERED PUBLIC ACCOUNTING FIRMS.—The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

''(3) INDEPENDENCE.—

''(A) IN GENERAL.—Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

''(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

''(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

''(ii) be an affiliated person of the issuer or any subsidiary thereof.

''(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

''(4) COMPLAINTS.—Each audit committee shall establish procedures for—

''(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

''(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

''(5) AUTHORITY TO ENGAGE ADVISERS.—Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

''(6) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

''(B) to any advisers employed by the audit committee under paragraph (5).''.

SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) REGULATIONS REQUIRED.—The Commission shall, by rule, require, for each company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(b) FOREIGN REINCORPORATIONS HAVE NO EFFECT.—Nothing in this section 302 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

(c) DEADLINE.—The rules required by subsection (a) shall be effective not later than 30 days after the date of enactment of this Act.

SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

(a) RULES TO PROHIBIT.—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) ENFORCEMENT.—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) NO PREEMPTION OF OTHER LAW.—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROFITS.

(a) ADDITIONAL COMPENSATION PRIOR TO NONCOMPLIANCE WITH COMMISSION FINANCIAL REPORTING REQUIREMENTS.—If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) COMMISSION EXEMPTION AUTHORITY.—The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.

(a) UNFITNESS STANDARD.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(2) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by striking ''substantial unfitness'' and inserting ''unfitness''.

(b) EQUITABLE RELIEF.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following:

''(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.''.

SEC. 306. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS.

(a) PROHIBITION OF INSIDER TRADING DURING PENSION FUND BLACKOUT PERIODS.—

(1) IN GENERAL.—Except to the extent otherwise provided by rule of the Commission pursuant to paragraph (3), it shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.

(2) REMEDY.—

(A) IN GENERAL.—Any profit realized by a director or executive officer referred to in paragraph (1) from any purchase, sale, or other acquisition or transfer in violation of this subsection shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(B) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this subsection may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(3) RULEMAKING AUTHORIZED.—The Commission shall, in consultation with the Secretary of Labor, issue rules to clarify the application of this subsection and to prevent evasion thereof. Such rules shall provide for the application of the requirements of paragraph (1) with respect to entities treated as a single employer with respect to an issuer under section 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 to the extent necessary to clarify the application of such requirements and to prevent evasion thereof. Such rules may also provide for appropriate exceptions from the requirements of this subsection, including exceptions for purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election.

(4) BLACKOUT PERIOD.—For purposes of this subsection, the term ''blackout period'', with respect to the equity securities of any issuer—

(A) means any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan; and

(B) does not include, under regulations which shall be prescribed by the Commission—

(i) a regularly scheduled period in which the participants and beneficiaries may not purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer, if such period is—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before becoming participants under the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(5) INDIVIDUAL ACCOUNT PLAN.—For purposes of this subsection, the term ''individual account plan'' has the meaning provided in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34), except that such term shall not include a one-participant retirement plan (within the meaning of section 101(i)(8)(B) of such Act (29 U.S.C. 1021(i)(8)(B))).

(6) NOTICE TO DIRECTORS, EXECUTIVE OFFICERS, AND THE COMMISSION.—In any case in which a director or executive officer is subject to the requirements of this subsection in connection with a blackout period (as defined in paragraph (4)) with respect to any equity securities, the issuer of such equity securities shall timely notify such director or officer and the Securities and Exchange Commission of such blackout period.

(b) NOTICE REQUIREMENTS TO PARTICIPANTS AND BENEFICIARIES UNDER ERISA.—

(1) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by redesignating the second subsection (h) as subsection (j), and by inserting after the first subsection (h) the following new subsection:

''(i) NOTICE OF BLACKOUT PERIODS TO PARTICIPANT OR BENEFICIARY UNDER INDIVIDUAL ACCOUNT PLAN.—

''(1) DUTIES OF PLAN ADMINISTRATOR.—In advance of the commencement of any blackout period with respect to an individual account plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

''(2) NOTICE REQUIREMENTS.—

''(A) IN GENERAL.—The notices described in paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall include—

''(i) the reasons for the blackout period,

''(ii) an identification of the investments and other rights affected,

''(iii) the expected beginning date and length of the blackout period,

''(iv) in the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and

''(v) such other matters as the Secretary may require by regulation.

''(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies at least 30 days in advance of the blackout period.

''(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

''(i) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1), and a fiduciary of the plan reasonably so determines in writing, or

''(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the blackout period is impracticable.

''(D) WRITTEN NOTICE.—The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

''(E) NOTICE TO ISSUERS OF EMPLOYER SECURITIES SUBJECT TO BLACKOUT PERIOD.—In the case of any blackout period in connection with an individual account plan, the plan administrator shall provide timely notice of such blackout period to the issuer of any employer securities subject to such blackout period.

''(3) EXCEPTION FOR BLACKOUT PERIODS WITH LIMITED APPLICABILITY.—In any case in which the blackout period applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the blackout period applies as soon as reasonably practicable.

''(4) CHANGES IN LENGTH OF BLACKOUT PERIOD.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the blackout period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended blackout period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

''(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

''(6) GUIDANCE AND MODEL NOTICES.—The Secretary shall issue guidance and model notices which meet the requirements of this subsection.

''(7) BLACKOUT PERIOD.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'blackout period' means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

''(B) EXCLUSIONS.—The term 'blackout period' does not include a suspension, limitation, or restriction—

''(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934),

''(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

''(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 206(d)(3)(K)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i)).

''(8) INDIVIDUAL ACCOUNT PLAN.—

''(A) IN GENERAL.—For purposes of this subsection, the term 'individual account plan' shall have the meaning provided such term in section 3(34), except that such term shall not include a one-participant retirement plan.

''(B) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of subparagraph (A), the term 'one-participant retirement plan' means a retirement plan that—

''(i) on the first day of the plan year—

''(I) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated), or

''(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation (as defined in section 1361(a) of the Internal Revenue Code of 1986)),

''(ii) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business,

''(iii) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses),

''(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

''(v) does not cover a business that leases employees.''.

(2) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.—The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 101(i)(6) of the Employee Retirement Income Security Act of 1974 (as added by this subsection) not later than January 1, 2003. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(3) CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking ''(5), or (6)'' and inserting ''(5), (6), or (7)'';

(B) by redesignating paragraph (7) of subsection (c) as paragraph (8); and

(C) by inserting after paragraph (6) of subsection (c) the following new paragraph:

''(7) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.''.

(3) PLAN AMENDMENTS.—If any amendment made by this subsection requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this subsection takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this subsection, and

(B) such plan amendment applies retroactively to the period after such amendment made by this subsection takes effect and before such first plan year.

(c) EFFECTIVE DATE.—The provisions of this section (including the amendments made thereby) shall take effect 180 days after the date of the enactment of this Act. Good faith compliance with the requirements of such provisions in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

SEC. 307. RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

SEC. 308. FAIR FUNDS FOR INVESTORS.

(a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

(b) ACCEPTANCE OF ADDITIONAL DONATIONS.—The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States for a disgorgement fund described in subsection (a). Such gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the disgorgement fund and shall be available for allocation in accordance with subsection (a).

(c) STUDY REQUIRED.—

(1) SUBJECT OF STUDY.—The Commission shall review and analyze—

(A) enforcement actions by the Commission over the five years preceding the date of the enactment of this Act that have included proceedings to obtain civil penalties or disgorgements to identify areas where such proceedings may be utilized to efficiently, effectively, and fairly provide restitution for injured investors; and

(B) other methods to more efficiently, effectively, and fairly provide restitution to injured investors, including methods to improve the collection rates for civil penalties and disgorgements.

(2) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after of the date of the enactment of this Act, and shall use such findings to revise its rules and regulations as necessary. The report shall include a discussion of regulatory or legislative actions that are recommended or that may be necessary to address concerns identified in the study.

(d) CONFORMING AMENDMENTS.—Each of the following provisions is amended by inserting '', except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002'' after ''Treasury of the United States'':

(1) Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)).

(2) Section 21A(d)(1) of such Act (15 U.S.C. 78u-1(d)(1)).

(3) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

(4) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)).

(5) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)).

(e) DEFINITION.—As used in this section, the term ''disgorgement fund'' means a fund established in any administrative or judicial proceeding described in subsection (a).

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

SEC. 401. DISCLOSURES IN PERIODIC REPORTS.

(a) DISCLOSURES REQUIRED.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(i) ACCURACY OF FINANCIAL REPORTS.—Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

''(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.''.

(b) COMMISSION RULES ON PRO FORMA FIGURES.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act fo 2002, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES.—

(1) STUDY REQUIRED.—The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 13(j) of the Securities Exchange Act of 1934, as added by this section, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) REPORT AND RECOMMENDATIONS.—Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Securities Exchange Act of 1934;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

(a) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

''(1) IN GENERAL.—It shall be unlawful for any issuer (as defined in section 2 of the Sarbanes-Oxley Act of 2002), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on the date of enactment of this subsection shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after that date of enactment.

''(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 5 of the Home Owners' Loan Act (12 U.S.C. 1464)), consumer credit (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or a charge card (as defined in section 127(c)(4)(e) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(e)), or any extension of credit by a broker or dealer registered under section 15 of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 7 of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

''(A) made or provided in the ordinary course of the consumer credit business of such issuer;

''(B) of a type that is generally made available by such issuer to the public; and

''(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

''(3) RULE OF CONSTRUCTION FOR CERTAIN LOANS.—Paragraph (1) does not apply to any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).''.

SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING MANAGEMENT AND PRINCIPAL STOCKHOLDERS.

(a) AMENDMENT.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by striking the heading of such section and subsection (a) and inserting the following:

"SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.

''(a) DISCLOSURES REQUIRED.—

''(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS REQUIRED TO FILE.—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 12, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission (and, if such security is registered on a national securities exchange, also with the exchange).

''(2) TIME OF FILING.—The statements required by this subsection shall be filed—

''(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g);

''(B) within 10 days after he or she becomes such beneficial owner, director, or officer;

''(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note)) involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.

''(3) CONTENTS OF STATEMENTS.—A statement filed—

''(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

''(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under such subparagraph.

''(4) ELECTRONIC FILING AND AVAILABILITY.—Beginning not later than 1 year after the date of enactment of the Sarbanes-Oxley Act of 2002—

''(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically;

''(B) the Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

''(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective 30 days after the date of the enactment of this Act.

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

(a) RULES REQUIRED.—The Commission shall prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) INTERNAL CONTROL EVALUATION AND REPORTING.—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

SEC. 405. EXEMPTION.

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFICERS.

(a) CODE OF ETHICS DISCLOSURE.—The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions.

(b) CHANGES IN CODES OF ETHICS.—The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8–K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics for senior financial officers.

(c) DEFINITION.—In this section, the term ''code of ethics'' means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL EXPERT.

(a) RULES DEFINING ''FINANCIAL EXPERT''.—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) CONSIDERATIONS.—In defining the term ''financial expert'' for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

(c) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

SEC. 408. ENHANCED REVIEW OF PERIODIC DISCLOSURES BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Commission shall review disclosures made by issuers reporting under section 13(a) of the Securities Exchange Act of 1934 (including reports filed on Form 10–K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

(b) REVIEW CRITERIA.—For purposes of scheduling the reviews required by subsection (a), the Commission shall consider, among other factors—

(1) issuers that have issued material restatements of financial results;

(2) issuers that experience significant volatility in their stock price as compared to other issuers;

(3) issuers with the largest market capitalization;

(4) emerging companies with disparities in price to earning ratios;

(5) issuers whose operations significantly affect any material sector of the economy; and

(6) any other factors that the Commission may consider relevant.

(c) MINIMUM REVIEW PERIOD.—In no event shall an issuer required to file reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 be reviewed under this section less frequently than once every 3 years.

SEC. 409. REAL TIME ISSUER DISCLOSURES.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(l) REAL TIME ISSUER DISCLOSURES.—Each issuer reporting under section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.''.

TITLE V—ANALYST CONFLICTS OF INTEREST

SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REGISTERED SECURITIES ASSOCIATIONS AND NATIONAL SECURITIES EXCHANGES.

(a) RULES REGARDING SECURITIES ANALYSTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15C the following new section:

"SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS.

''(a) ANALYST PROTECTIONS.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

''(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

''(A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

''(B) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

''(C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

''(2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

''(3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

''(4) to address such other issues as the Commission, or such association or exchange, determines appropriate.

''(b) DISCLOSURE.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

''(1) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

''(2) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

''(3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

''(4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

''(5) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

''(c) DEFINITIONS.—In this section—

''(1) the term 'securities analyst' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of 'securities analyst'; and

''(2) the term 'research report' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.''.

(b) ENFORCEMENT.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended by inserting ''15D,'' before ''15B''.

(c) COMMISSION AUTHORITY.—The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15D of the Securities Exchange Act of 1934, as added by this section, as is necessary for the protection of investors and in the public interest.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

''SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

''In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, $776,000,000 for fiscal year 2003, of which—

''(1) $102,700,000 shall be available to fund additional compensation, including salaries and benefits, as authorized in the Investor and Capital Markets Fee Relief Act (Public Law 107–123; 115 Stat. 2390 et seq.);

''(2) $108,400,000 shall be available for information technology, security enhancements, and recovery and mitigation activities in light of the terrorist attacks of September 11, 2001; and

''(3) $98,000,000 shall be available to add not fewer than an additional 200 qualified professionals to provide enhanced oversight of auditors and audit services required by the Federal securities laws, and to improve Commission investigative and disciplinary efforts with respect to such auditors and services, as well as for additional professional support staff necessary to strengthen the programs of the Commission involving Full Disclosure and Prevention and Suppression of Fraud, risk management, industry technology review, compliance, inspections, examinations, market regulation, and investment management.''.

SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4B the following:

''SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

''(a) AUTHORITY TO CENSURE.—The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

''(1) not to possess the requisite qualifications to represent others;

''(2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or

''(3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

''(b) DEFINITION.—With respect to any registered public accounting firm or associated person, for purposes of this section, the term 'improper professional conduct' means—

''(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and

''(2) negligent conduct in the form of—

''(A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or

''(B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.''.

SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE PENNY STOCK BARS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)), as amended by this Act, is amended by adding at the end the following:

''(6) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

''(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

''(B) DEFINITION.—For purposes of this paragraph, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.''.

(b) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following:

''(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

''(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

''(2) DEFINITION.—For purposes of this subsection, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.''.

SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS OF BROKERS AND DEALERS.

(a) BROKERS AND DEALERS.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by striking subparagraph (F) and inserting the following:

''(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer;''; and

(2) in subparagraph (G), by striking the period at the end and inserting the following: ''; or

''(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

''(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

''(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.''.

(b) INVESTMENT ADVISERS.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

(1) by striking paragraph (7) and inserting the following:

''(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;'';

(2) in paragraph (8), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

''(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

''(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.''.

(c) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(A) in section 3(a)(39)(F) (15 U.S.C. 78c(a)(39)(F))—

(i) by striking ''or (G)'' and inserting ''(H), or (G)''; and

(ii) by inserting '', or is subject to an order or finding,'' before ''enumerated'';

(B) in each of section 15(b)(6)(A)(i) (15 U.S.C. 78o(b)(6)(A)(i)), paragraphs (2) and (4) of section 15B(c) (15 U.S.C. 78o–4(c)), and subparagraphs (A) and (C) of section 15C(c)(1) (15 U.S.C. 78o–5(c)(1))—

(i) by striking ''or (G)'' each place that term appears and inserting ''(H), or (G)''; and

(ii) by striking ''or omission'' each place that term appears, and inserting '', or is subject to an order or finding,''; and

(C) in each of paragraphs (3)(A) and (4)(C) of section 17A(c) (15 U.S.C. 78q–1(c))—

(i) by striking ''or (G)'' each place that term appears and inserting ''(H), or (G)''; and

(ii) by inserting '', or is subject to an order or finding,'' before ''enumerated'' each place that term appears.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended—

(A) by striking ''or (8)'' and inserting ''(8), or (9)''; and

(B) by inserting ''or (3)'' after ''paragraph (2)''.

TITLE VII—STUDIES AND REPORTS

SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study—

(1) to identify—

(A) the factors that have led to the consolidation of public accounting firms since 1989 and the consequent reduction in the number of firms capable of providing audit services to large national and multi-national business organizations that are subject to the securities laws;

(B) the present and future impact of the condition described in subparagraph (A) on capital formation and securities markets, both domestic and international; and

(C) solutions to any problems identified under subparagraph (B), including ways to increase competition and the number of firms capable of providing audit services to large national and multinational business organizations that are subject to the securities laws;

(2) of the problems, if any, faced by business organizations that have resulted from limited competition among public accounting firms, including—

(A) higher costs;

(B) lower quality of services;

(C) impairment of auditor independence; or

(D) lack of choice; and

(3) whether and to what extent Federal or State regulations impede competition among public accounting firms.

(b) CONSULTATION.—In planning and conducting the study under this section, the Comptroller General shall consult with—

(1) the Commission;

(2) the regulatory agencies that perform functions similar to the Commission within the other member countries of the Group of Seven Industrialized Nations;

(3) the Department of Justice; and

(4) any other public or private sector organization that the Comptroller General considers appropriate.

(c) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 702. COMMISSION STUDY AND REPORT REGARDING CREDIT RATING AGENCIES.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the role of credit rating agencies in the evaluation of issuers of securities;

(B) the importance of that role to investors and the functioning of the securities markets;

(C) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;

(D) any barriers to entry into the business of acting as a credit rating agency, and any measures needed to remove such barriers;

(E) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings; and

(F) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) REPORT REQUIRED.—The Commission shall submit a report on the study required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 180 days after the date of enactment of this Act.

SEC. 703. STUDY AND REPORT ON VIOLATORS AND VIOLATIONS.

(a) STUDY.—The Commission shall conduct a study to determine, based upon information for the period from January 1, 1998, to December 31, 2001—

(1) the number of securities professionals, defined as public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals practicing before the Commission—

(A) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (collectively referred to in this section as ''Federal securities laws''), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such an action or proceeding (referred to in this section as ''aiders and abettors''); and

(B) who have been found to have been primary violators of the Federal securities laws;

(2) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

(A) the specific provision of the Federal securities laws violated;

(B) the specific sanctions and penalties imposed upon such aiders and abettors and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

(C) the occurrence of multiple violations by the same person or persons, either as an aider or abettor or as a primary violator; and

(D) whether, as to each such violator, disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

(3) the amount of disgorgement, restitution, or any other fines or payments that the Commission has assessed upon and collected from, aiders and abettors and from primary violators.

(b) REPORT.—A report based upon the study conducted pursuant to subsection (a) shall be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives not later than 6 months after the date of enactment of this Act.

SEC. 704. STUDY OF ENFORCEMENT ACTIONS.

(a) STUDY REQUIRED.—The Commission shall review and analyze all enforcement actions by the Commission involving violations of reporting requirements imposed under the securities laws, and restatements of financial statements, over the 5-year period preceding the date of enactment of this Act, to identify areas of reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this Act, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 705. STUDY OF INVESTMENT BANKS.

(a) GAO STUDY.—The Comptroller General of the United States shall conduct a study on whether investment banks and financial advisers assisted public companies in manipulating their earnings and obfuscating their true financial condition. The study should address the

rule of investment banks and financial advisers—

(1) in the collapse of the Enron Corporation, including with respect to the design and implementation of derivatives transactions, transactions involving special purpose vehicles, and other financial arrangements that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company;

(2) in the failure of Global Crossing, including with respect to transactions involving swaps of fiberoptic cable capacity, in the designing transactions that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company; and

(3) generally, in creating and marketing transactions which may have been designed solely to enable companies to manipulate revenue streams, obtain loans, or move liabilities off balance sheets without altering the economic and business risks faced by the companies or any other mechanism to obscure a company's financial picture.

(b) REPORT.—The Comptroller General shall report to Congress not later than 180 days after the date of enactment of this Act on the results of the study required by this section. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

SEC. 801. SHORT TITLE.

This title may be cited as the ''Corporate and Criminal Fraud Accountability Act of 2002''.

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

''§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

''Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

''§ 1520. Destruction of corporate audit records

''(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

''(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

''(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 10 years, or both.

''(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

''1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

''1520. Destruction of corporate audit records.''.

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end, the following:

''(19) that—

''(A) is for—

''(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

''(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

''(B) results from—

''(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

''(ii) any settlement agreement entered into by the debtor; or

''(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.''.

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Except''; and

(2) by adding at the end the following:

''(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

''(1) 2 years after the discovery of the facts constituting the violation; or

''(2) 5 years after such violation.''.

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action.

SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

(a) ENHANCEMENT OF FRAUD AND OBSTRUCTION OF JUSTICE SENTENCES.—Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(B) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(5) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

(b) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the prcedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

''§ 1514A. Civil action to protect against retaliation in fraud cases

''(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

''(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

''(b) ENFORCEMENT ACTION.—

''(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

''(A) filing a complaint with the Secretary of Labor; or

''(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

''(2) PROCEDURE.—

''(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

''(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

''(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

''(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

''(c) REMEDIES.—

''(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

''(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

''(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

''(B) the amount of back pay, with interest; and

''(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

''(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

''1514A. Civil action to protect against retaliation in fraud cases.''.

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''§ 1348. Securities fraud

''Whoever knowingly executes, or attempts to execute, a scheme or artifice—

''(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

''(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 25 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

''1348. Securities fraud.''.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

SEC. 901. SHORT TITLE.

This title may be cited as the ''White-Collar Crime Penalty Enhancement Act of 2002''.

SEC. 902. ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMINAL FRAUD OFFENSES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1348 as added by this Act the following:

''§ 1349. Attempt and conspiracy

''Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

''1349. Attempt and conspiracy.''.

SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) MAIL FRAUD.—Section 1341 of title 18, United States Code, is amended by striking ''five'' and inserting ''20''.

(b) WIRE FRAUD.—Section 1343 of title 18, United States Code, is amended by striking ''five'' and inserting ''20''.

SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by striking ''$5,000'' and inserting ''$100,000'';

(1) by striking ''one year'' and inserting ''10 years''; and

(3) by striking ''$100,000'' and inserting ''$500,000''.

SEC. 905. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this Act.

(b) REQUIREMENTS.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this Act, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address whether the guideline offense levels and enhancements for violations of the sections amended by this Act are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this Act;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 906. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by inserting after section 1349, as created by this Act, the following:

''§ 1350. Failure of corporate officers to certify financial reports

(a) CERTIFICATION OF PERIODIC FINANCIAL REPORTS.—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chief executive officer and chief financial officer (or equivalent thereof) of the issuer.

''(b) CONTENT.—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act pf 1934 (15 U.S.C. 78m or 78o(d)) and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

''(c) CRIMINAL PENALTIES.—Whoever—

''(1) certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $1,000,000 or imprisoned not more than 10 years, or both; or

''(2) willfully certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than $5,000,000, or imprisoned not more than 20 years, or both.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

''1350. Failure of corporate officers to certify financial reports.''.

TITLE X—CORPORATE TAX RETURNS

SEC. 1001. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

TITLE XI—CORPORATE FRAUD ACCOUNTABILITY

SEC. 1101. SHORT TITLE.

This title may be cited as the ''Corporate Fraud Accountability Act of 2002''.

SEC. 1102. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following new subsection:

''(c) Whoever corruptly—

''(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

''(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.''.

SEC. 1103. TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—Section 21C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)) is amended by adding at the end the following:

''(3) TEMPORARY FREEZE.—

''(A) IN GENERAL.—

''(i) ISSUANCE OF TEMPORARY ORDER.—Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

''(ii) STANDARD.—A temporary order shall be entered under clause (i), only after notice and opportunity for a hearing, unless the court determines that notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

''(iii) EFFECTIVE PERIOD.—A temporary order issued under clause (i) shall—

''(I) become effective immediately;

''(II) be served upon the parties subject to it; and

''(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

''(iv) EXTENSIONS AUTHORIZED.—The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.

''(B) PROCESS ON DETERMINATION OF VIOLATIONS.—

''(i) VIOLATIONS CHARGED.—If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person, shall have the right to petition the court for review of the order.

''(ii) VIOLATIONS NOT CHARGED.—If the issuer or other person described in subparagraph (A) is not charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the escrow shall terminate at the expiration of the 45-day effective period (or the expiration of any extension period, as applicable), and the disputed payments (with accrued interest) shall be returned to the issuer or other affected person.''.

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3(c)(2)) is amended by striking ''This'' and inserting ''paragraph (1)''.

SEC. 1104. AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Sentencing Commission pursuant to paragraph (2) and any additional policy recommendations the Sentencing Commission may have for combating offenses described in paragraph (1).

(b) CONSIDERATIONS IN REVIEW.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) ensure that guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated;

(5) ensure that the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553 (a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 180 days after the date of enactment of this Act, in accordance with the procedures sent forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 1105. AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u–3) is amended by adding at the end the following:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end of the following:

''(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.''.

SEC. 1106. INCREASED CRIMINAL PENALTIES UNDER SECURITIES EXCHANGE ACT OF 1934.

Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended—

(1) by striking ''$1,000,000, or imprisoned not more than 10 years'' and inserting ''$5,000,000, or imprisoned not more than 20 years''; and

(2) by striking ''$2,500,000'' and inserting ''$25,000,000''.

SEC. 1107. RETALIATION AGAINST INFORMANTS.

(a) IN GENERAL.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

''(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.''.

And the Senate agree to the same.

From the Committee on Financial Services, for consideration of the House bill and the Senate amendments, and modifications committed to conference:

MICHAEL G. OXLEY,
RICHARD H. BAKER,
ED ROYCE,
ROBERT W. NEY,
SUE W. KELLY,
CHRIS COX,
JOHN J. LAFALCE,
BARNEY FRANK,
PAUL E. KANJORSKI,
MAXINE WATERS,

Provided that Mr. Shows is appointed in lieu of Ms. Waters for consideration of section 11 of the House bill and section 305 of the Senate amendment, and modifications committed to conference:

RONNIE SHOWS,

From the Committee on Education and the Workforce, for consideration of sections 306 and 904 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
SAM JOHNSON,
GEORGE MILLER,

From the Committee on Energy and Commerce, for consideration of sections 108 and 109 of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
JAMES GREENWOOD,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of section 105 and titles VIII and IX of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
LAMAR SMITH,
JOHN CONYERS,

From the Committee on Ways and Means, for consideration of section 109 of the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
JIM MCCRERY,
CHARLES B. RANGEL,

Managers on the Part of the House.

PAUL SARBANES,

CHRISTOPHER DODD,
TIM JOHNSON,
JACK REED,
PATRICK J. LEAHY,
RICHARD C. SHELBY,
ROBERT F. BENNETT,
MICHAEL B. ENZI,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3763), to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

The Managers on the part of the House and the Senate met on July 19 and July 24, 2002 (the House chairing), and reconciled the differences between the House bill and the Senate amendment.

From the Committee on Financial Services, for consideration of the House bill and the Senate amendments, and modifications committed to conference:

MICHAEL G. OXLEY,
RICHARD H. BAKER,
ED ROYCE,
ROBERT W. NEY,
SUE W. KELLY,
CHRIS COX,
JOHN J. LAFALCE,
BARNEY FRANK,
PAUL E. KANJORSKI,
MAXINE WATERS,

Provided that Mr. Shows is appointed in lieu of Ms. Waters for consideration of section 11 of the House bill and section 305 of the Senate amendment, and modifications committed to conference:

RONNIE SHOWS,

From the Committee on Education and the Workforce, for consideration of sections 306 and 904 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
SAM JOHNSON,
GEORGE MILLER,

From the Committee on Energy and Commerce, for consideration of sections 108 and 109 of the Senate amendment, and modifications committed to conference:

BILLY TAUZIN,
JAMES GREENWOOD,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of section 105 and titles VIII and IX of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
LAMAR SMITH,
JOHN CONYERS,

From the Committee on Ways and Means, for consideration of section 109 of the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
JIM MCCRERY,
CHARLES B. RANGEL,
Managers on the Part of the House.

PAUL SARBANES,
CHRISTOPHER DODD,
TIM JOHNSON,
JACK REED,
PATRICK J. LEAHY,
RICHARD C. SHELBY,
ROBERT F. BENNETT,
MICHAEL B. ENZI,
Managers on the Part of the Senate.