TRIBUTE TO MR. DONALD J. KRAPOHL

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. KILDEE. Mr. Speaker, I rise before you today to pay tribute to an outstanding individual, Mr. Donald J. Krapohl. On May 23, 2004, family and friends will gather to honor Donald, as he celebrates his 75th birthday.

Donald is a longtime resident and tireless advocate of Genesee County. He held the election positions of Mt. Morris Township Trustee and Supervisor. In addition, Don served his community in many other capacities, including but not limited to the Beecher Board of Education, Genesee County Economic Development Corp., Genesee County Parks Commission, Genesee County Bicentennial coordinator, Genesee County Metropolitan Planning Commission, Mt. Morris Twp. Housing Commission, Department of Outdoor Recreation advisory committee, National Association of Counties Criminal Justice and Law Enforcement committee, Forward Development Corporation, Genesee County water and waste division advisory committee, and Chairman of the Mt. Morris Twp. Senior Citizen Board of Directors.

During his career, Don has received numerous recognitions for his outstanding community leadership. He was named an honorary Fireman by the Mt. Morris Central and Beecher Fire departments. The Mt. Morris Township Senior Citizen Center was named in his honor. To know Don is to appreciate him. He is a hard working and unselfish leader. He is an inspiration to others who are serving their community. Aside from his duties in public service, he is the coach for the Beecher Schools little league football program.

Don and his lovely wife Barbara have four wonderful children, eight grandchildren, and three great-grandchildren.

Mr. Speaker, as the Member of Congress representing Genesee County, Michigan, I ask my colleagues in the 108th Congress to please join me in not only recognizing my good friend Mr. Donald Krapohl for his outstanding citizenship and concern for the people of Genesee County, but to wish him a very happy 75th birthday, and many more to come.

PERSONAL EXPLANATION

HON. DAVID SCOTT

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. SCOTT of Georgia. Mr. Speaker, due to a death in the family I missed several votes last week. Had I been present:

Rollcall No. 162 (on motion to recommit H.R. 4279), I would have voted ''yea''.

Rollcall No. 163 (on passage of H.R. 4279), I would have voted ''yea''.

Rollcall No. 164 (on motion to suspend the rules and agree to H. Con. Res. 352), I would have voted ''yea''.

Rollcall No. 165 (on motion to recommit H.R. 4280), I would have voted ''yea''.

Rollcall No. 166 (on passage of H.R. 4280), I would have voted ''yea''.

Rollcall No. 167 (on motion to suspend the rules and agree, as amended to H. Con. Res. 378), I would have voted ''yea''.

Rollcall No. 168 (on motion to suspend the rules and agree to H. Con. Res. 409), I would have voted ''yea''.

Rollcall No. 169 (on agreeing to the Tanner amendment to H.R. 4275), I would have voted ''yea''.

Rollcall No. 170 (on passage of H.R. 4275), I would have voted ''yea''.

Rollcall No. 171 (on motion to instruct conferees on S. Con. Res. 95), I would have voted ''yea''.

Rollcall No. 172 (on agreeing to the Kind amendment to H.R. 4281), I would have voted ''yea''.

Rollcall No. 173 (on motion to recommit with instructions H.R. 4281), I would have voted ''yea''.

Rollcall No. 174 (on passage of H.R. 4281), I would have voted ''nay''.

Rollcall No. 175 (on motion to suspend the rules and pass H.J. Res. 91), I would have voted ''yea''.

Rollcall No. 176 (on agreeing to the resolution H. Con. Res. 414), I would have voted ''yea''.

MAY IS ASIAN PACIFIC AMERICAN HERITAGE MONTH

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. FARR. Mr. Speaker, May is Asian Pacific American Heritage Month, and I would like to commemorate the substantial achievements of Asian Pacific Americans to our nation's history. My district, comprised of Santa Cruz, Monterey and San Benito Counties in California owes a particularly large debt to the Asian Pacific community. California has benefited greatly from the contributions of Asian Pacific immigrants throughout the 19th and 20th centuries. Chinese immigrants were instrumental in building the transcontinental railroad which helped open California to settlement and brought rapid economic growth to the West and along with immigrants from Japan, helped start Monterey's commercial fishing industry.

The Central Coast of California was and still is, highly dependent on agriculture. Starting in the late 1890s, Chinese, Japanese and Filipino farm laborers were the engine behind the growth and development of the agricultural industry. Farm labor work on strawberry and peach farms was often back-breaking work; laborers rose at dawn and worked until dusk, and were generally paid very poorly. Additionally, Asian Pacific immigrants were often treated horribly and harshly discriminated against. Filipino farm workers formed the first organized group in the early history of the United Farm Workers Union. Despite these conditions and obstacles, over the last hundred years, the Asian Pacific American community has grown into a vibrant community that has made substantial contributions to California and our nation as a whole. I am proud to represent a large Filipino population in my district who are active citizens of the community.

This year's theme of Asian Pacific American Heritage Month is ''Freedom for All—A Nation We Call Our Own,'' and exemplifies one of the best aspects of the America; that all citizens can take ownership in our society and country and work towards building a better nation. Mabuhay.

PERSONAL EXPLANATION

HON. J. D. HAYWORTH

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. HAYWORTH. Mr. Speaker, on May 19, 2004, I missed a series of rollcall votes in the House of Representatives because of a family obligation that required my presence in Arizona. Had I been present, I would have voted ''yes'' on rollcall votes 191, 192, 193, 194, 195, 196, 198, and 199. I would have voted ''no'' on rollcall vote 197.

CLARIFICATION OF ANTITRUST REMEDIES IN TELECOMMUNICATIONS ACT OF 2004

HON. F. JAMES SENSENBRENNER, JR.

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. SENSENBRENNER. Mr. Speaker, the application of the antitrust laws in the telecommunications sector has produced enormous competitive benefits. Market competition has fostered innovative technologies, greatly enhanced product and service choices, and reduced prices for millions of American telecommunications consumers. The threat of treble damages for antitrust violations has provided a powerful deterrent against anticompetitive misconduct in this marketplace.

Indeed, the primary catalyst for the structural changes that have produced the enormous competitive gains and expanded consumer choice in the telecommunications fields was the principled application of the antitrust laws. The legal basis for the elimination of Ma Bell's national telephone monopoly was rooted in the antitrust laws. While the former AT&T had operated in a highly intensive Federal and State regulatory regime for decades, the government relied on the antitrust laws to provide the robust procompetitive remedy that regulation could not, did not, and will not provide alone.

The Telecommunications Act of 1996 (the ''Telecom Act''), was enacted ''to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers . . . by opening all telecommunications markets to competition.'' In passing the Telecom Act, Congress did not create an ''antitrust free zone'' in which the regulatory provisions of the Telecom Act limited the historic application of the antitrust laws in deterring and punishing monopolistic misconduct in the telecommunications field.

Rather, to reaffirm the centrality of the antitrust laws in the overall regulatory scheme created by the Telecom Act, Congress included an explicit antitrust saving clause in the legislation. In clear and forceful legislative guidance, Congress said:

''. . . Nothing in this Act or the amendments made by this Act shall be construed to

modify, impair, or supersede the applicability of any of the antitrust laws.''

The inadequacy of regulation to fully deter anticompetitive misconduct is widely recognized. In fact, Federal Communications Commission Chairman Michael Powell, whose agency has authority to implement the Telecom Act, concluded in a 2001 letter to the Senate Appropriations Committee that the FCC's current fining authority for anticompetitive violations is ''insufficient to punish and deter violations in many instances . . . given the vast resources of many of the nation's [incumbents.]''

Despite Congress's unmistakable resolve to preserve the vital role of the antitrust laws in this field, a record of considerable judicial confusion has developed in our nation's courts. In 2000, the Seventh Circuit issued the Goldwasser decision, ignoring the plain language of the antitrust savings clause and holding that the Telecom Act ''must take precedence over the general antitrust laws.''

In Law Offices of Curtis Trinko v. Verizon, the Second Circuit Court of Appeals sharply departed from Goldwasser's flawed reasoning and upheld the plain language of the Telecom Act, thus preserving an antitrust cause of action for anticompetitive misconduct in the telecommunications market in addition to the regulatory regime created by the Telecom Act.

In March of 2003, the Supreme Court granted certiorari to review the case. In November of 2003, the Committee on the Judiciary conducted an oversight hearing titled: ''Saving the Savings Clause: Congressional Intent, the Trinko Case, and the Role of the Antitrust Laws in Promoting Competition in the Telecom Sector.'' This hearing examined the need to preserve an antitrust remedy for anticompetitive misconduct that may also violate provisions of the Telecom Act. During the committee's hearing, I stated that ''judicial circumvention or erosion of the savings clause contained in the 1996 Act will necessitate a swift and decisive legislative correction from this Committee and Congress.''

In January, 2004, the Supreme Court handed down its Trinko decision. While the Court upheld the antitrust savings clause on its face, the decision makes it nearly impossible to state an antitrust claim for anticompetitive conduct within the regulatory ambit of the Telecom Act.

In reaching its conclusion, the majority looked to the perceived institutional capacity of regulators to remedy anticompetitive misconduct. Specifically, the majority decision stated: ''One factor of particular importance is the existence of a regulatory structure designed to deter and remedy anticompetitive harm. Where such a structure exists, the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust laws contemplate such additional scrutiny. . . .'' The Court also stated that the ''regulatory framework that exists in this case demonstrates how, in certain circumstances, 'regulations significantly diminished the likelihood of major antitrust harm.' '' The Court then concluded that ''against the slight benefits of antitrust intervention here, we must weigh a realistic assessment of its costs.''

This is precisely the judicial analysis that the antitrust savings clause in the Telecom Act precluded. This fundamental judicial error ignores the plain meaning of the antitrust savings clause contained in the Telecom Act and the intent of Congress, and undermines remedial antitrust enforcement in a manner that threatens continued competitive gains in the telecommunications marketplace.

Last November, I stated that ''judicial circumvention of the antitrust savings clause in the Telecom Act will necessitate a decisive legislative correction from this Committee and Congress.'' The legislation I introduce today, with the consponsorship of Ranking Member CONYERS, delivers on this commitment. This bill reiterates Congress's intent that the full force of the antitrust laws apply to the telecommunications field. The ''Clarification of Antitrust Remedies in Telecommunications Act of 2004'' merely provides that unlawful monopolistic behavior that may also violate the regulatory obligations of the Telecom Act may constitute an antitrust violation. The legislation provides an antitrust remedy for these violations irrespective of the existence of regulations that apply to this industry. In so doing, the legislation merely reiterates the plain meaning of the antitrust savings clause and the broad bipartisan intent of Congress to preserve the application of the antitrust laws in the telecommunications field irrespective of the existence of the Telecom Act.

To be clear, the legislation does not automatically transform violations of the 1996 Act into antitrust violations: this is not, nor has it even been, the intent of preserving application of the antitrust laws in the regulatory scheme created by the Telecom Act. The ''Clarification of Antitrust Remedies in Telecom Act of 2004'' merely reaffirms that violations of the Telecommunications Act may constitute an antitrust violation in appropriate circumstances: this legislation restores the result Congress intended; it does not transform the antitrust laws nor create antitrust obligations that the Telecommunications Act did not contemplate.

Over the last five decades, the Committee on the Judiciary has played a central role promoting competition in the telecommunications market. It has drafted procompetitive legislation and overseen its implementation. The committee has also diligently preserved the application of the antitrust laws in the telecommunications marketplace. The ''Clarification of Antitrust Remedies in Telecommunications Act of 2004'' continues this important tradition by ensuring that the antitrust laws continue to provide a catalyst to promote competition and consumer choice in this vital marketplace.

In that vein, I wish to comment briefly on a related matter. The committee continues to monitor the status of negotiations between incumbent and competitive local exchange carriers requested by the Federal Communications Commission in light of the D.C. Circuit Court of Appeals March 2, 2004, invalidation of key aspects of the most recent FCC Triennial Review Order. While the Committee on the Judiciary does not intend to prejudice the outcome of these continuing talks, it reserves the right to review these agreements to ensure that they are consistent with the antitrust laws and promote competition and consumer choice in the telecommunications marketplace.

I look forward to working with my colleagues to ensure that the antitrust laws produce the irreversibly open telecommunications markets that we all seek, and urge their support for this critical legislation.

PROVIDING FOR CONSIDERATION OF H.R. 4200, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

HON. JOHN F. TIERNEY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 20, 2004

Mr. TIERNEY. Mr. Speaker, I rise today to oppose the Republican Majority's proposed rule that would limit debate on a matter as important as the Department of Defense Authorization bill, which purports to provide spending in excess of $400 billion for Fiscal Year 2005. At a time when Members of the United States House of Representatives claim to be supporting the extension of democracy in Afghanistan and Iraq, it is unconscionable for the leadership to limit debate in the House.

There were times in the not too distant past, where a bill of this magnitude would have been debated for at least two weeks. Members would have had the opportunity to voice their position on hundreds of amendments important to their constituents and the nation. It appears that keeping with the Republican Majority's fear that reasonable Republicans will join Democrats in actually improving the underlying bill, the Rules Committee has acceded to the Majority Leadership's pressure and only allowed 28 of 127 amendments for debate and vote. This institution—the People's House—deserves better, and the American people deserve better. Had the Rules Committee and the Leadership followed a practice from a time before the current Majority was in power, most if not all of the proposed amendments would have been made in order, including two amendments which I proposed and which, I firmly believe are in our common interest.

We should be able to agree that American defense workers are 100 percent committed to our armed forces and to ensuring that America has the best trained, best equipped, best led forces in the world. Unfortunately, these workers have seen their jobs vanish at an alarming rate without explanation or justification. Over the past 15 years, defense-related employment is said to have fallen by some 67 percent. This translates into over a million lost jobs. We need to do more to reverse this disturbing trend.

The Amendment I sought would place us standing firmly in solidarity with these workers. First, we would find out where the jobs have gone, and second, fight to keep them in this country.

We made a similar fight last year. We were partially successful. The House-passed version of the Defense Department Authorization bill established a ''Defense Industrial Base Assessment Program'' to collect new information about where defense contracts are being performed; to determine what percentage of the contract is being completed overseas; and to learn the business rationale for why contractors are sending contract work out of the United States. The bill then called for the Secretary of Defense to recommend a plan for getting back as much of the off-shored work as possible in future years. Unfortunately, that program was significantly weakened when the Senate version of last year's authorization bill failed to include the language, and the conference report only required the Department to