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No. 109

House of Representatives

The House met at 9 a.m.

MORNING HOUR DEBATES

The SPEAKER. Pursuant to the order of the House of January 20, 2004, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 25 minutes, and each Member except the majority leader, the minority leader or the minority whip limited to not to exceed 5 minutes, but in no event shall debate extend beyond 9:50 a.m.

The Chair recognizes the gentleman from Arizona (Mr. HAYWORTH) for 5 minutes.

TRIBUTE TO BEN JEFFERSON: VETERAN, LEADER, CITIZEN

Mr. HAYWORTH. Mr. Speaker, it is my sad duty to inform this House and the people of Arizona of the passing of the Veterans Affairs Coordinator for the people of the Fifth Congressional District of Arizona, Ben Jefferson. Ben lost his battle with leukemia at 1 o'clock a.m. Arizona time Monday. Mary and I were privileged to be with Ben Sunday afternoon prior to his passing, and we reflect back on a remarkable life of service.

Mr. Speaker, too often what we do is described as public service. That is an honor and an accolade, but ultimately it is somewhat inaccurate, for what we are involved in is public office. But public service is a dimension that does not require election to office; it instead requires a spirit of servanthood, and that spirit of service sums up the life of Ben Jefferson.

Ben moved to Phoenix as a very young boy from Louisiana. He saw Phoenix grow, and, as he grew, so too did that responsibility of service, made manifest by a career in the Navy, a ca-

reer which saw him as a medical corpsman in Korea, which saw him again answer the call to duty in Vietnam, which literally took him around the world, even for a year's duty at the research station at the South Pole.

Ben had a heart for people. And how fortunate I was, and, indeed, Mr. Speaker, those of us who serve here are honored by one of the gratifying mysteries of running for public office, which is that good people cross your path, and, more amazingly, those good people are willing to donate their time and their energy and their enthusiasm, first to campaigns and then as support staff.

So it was for Ben Jefferson. After a career in the Navy, after a career in business, stepping forward first in a campaign, and then assuming a role that he prepared for throughout his life, that of service to our Nation's veterans and the important role that the military plays, not only for retirees, but for those young people who aspire to attend a service academy.

It was Ben Jefferson who put together the groups for the Army and the Navy and the Air Force, who would review the candidates and candidacies of those who aspire to attend our Nation's academies. Ben Jefferson would be along my side when I would have one of the most gratifying experiences any Member of this House can have, when you call a young person and their family to inform them that they have been accepted at one of our military academies.

The same Ben Jefferson would take calls from veterans who had questions about their benefits, veterans who needed help at the hospital, veterans who had fallen on hard times, and always Ben Jefferson was willing to help.

We celebrate his life, even as we mourn his passing, his wife, Bette, his children, his relatives who will gather in Arizona later this week to remember this remarkable man.

At one point in his life he thought he would be called into the ministry. But it turned out his ministry was not from the pulpit, it was not as a pastor per se. Instead, in the spirit of James in the New Testament, it was not wrapped up in talk and good wishes, it was service and action and stepping forward to help people. Indeed, Mr. Speaker, on what became his deathbed, Ben Jefferson spoke about constituents in need and friends who faced similar challenges of disease, always in a spirit of what can I do to help?

In those last minutes when Mary and I were with Ben and with his wife Bette and with other loved ones, I could not help but reflect on the words I think he has heard by now: "Well done, good and faithful servant."

Ben Jefferson: Veteran, leader, citizen. We will always remember you and all you did for the people of Arizona.

ENDING LAWSUIT ABUSE

The SPEAKER pro tempore (Mr. CARTER). Pursuant to the order of the House of January 20, 2004, the gentleman from Texas (Mr. DELAY) is recognized during morning hour debates.

Mr. DELAY. Mr. Speaker, frivolous, parasitic lawsuits are a clear and present danger to the economic health of the United States. They clog our courts, generate billions of dollars in administrative fees, artificially raise insurance premiums, kill jobs, stifle investment and innovation and otherwise produce little else for American society but headaches and lawyer jokes.

It has been and remains a principle of the Republican congressional majority to rein in trial lawyers and their predatory, self-serving litigation, thereby protecting American jobs and companies from their crippling effects.

The pestilent culture of hyper-litigation now corrupting our legal system may be championed in the name of "the little guy," but the only thing little about its true beneficiaries is their

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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shame. Plaintiffs and defendants are merely a means to an end for the trial lawyers, who get fat off the pain of one group or the hard work of the other.

The time for reform is now, Mr. Speaker, and this week, the House will continue its long-term strategy of taking back America's legal system from the "Lords of the Ambulance Chase."

Today we will take up four bills to rein in lawsuit abuse. We will pass bills specifically protecting interscholastic sports organizations from lawsuits concerning their athletic rules; protecting volunteer firefighters from lawsuits that discourage generous Americans from donating equipment to them; and protecting volunteer pilots who come to the aid of their communities in times of crisis. And more comprehensively, Mr. Speaker, we will take up legislation presented by the gentleman from Texas (Mr. SMITH), the Lawsuit Abuse Reduction Act, which will impose mandatory penalties on those who file frivolous lawsuits.

This bill will also prevent clever lawyers from shopping around for favorable judges and venues wholly unrelated to the case, it will remove the "free pass" provisions in the Federal Rules of Civil Procedure that many lawyers hide behind once their claim is exposed as a farce, and it will better hold lawyers accountable for their behavior during the discovery process.

In short, Mr. Speaker, these bills together will further help take back the judicial system for legitimate plaintiffs, real defendants, principled lawyers who serve the ideals of their honorable profession, our national economic health, and, finally, for justice itself.

PROPOSING A TEMPORARY MEMORIAL IN THE CAPITOL ROTUNDA

The SPEAKER pro tempore. Pursuant to the order of the House of January 20, 2004, the gentleman from Illinois (Mr. EMANUEL) is recognized during morning hour debates for 5 minutes.

Mr. EMANUEL. Mr. Speaker, last week we passed the 1,000th casualty mark in Iraq. Since then, we have lost another 12 of our fellow citizens in service to their country and its ideals. 1,012 American families are grieving the loss of their loved ones; 1,140 when we count the theater of Afghanistan and its conflict.

Mr. Speaker, we salute our Soldiers, Marines, Airmen, Sailors, Reservists and Guardsmen called to duty. We thank them deeply for their service and their sacrifice and that of their families. We must honor their service and pay tribute to their heroism.

For these reasons, the gentleman from Texas (Mr. TURNER) and I have written a letter to the Speaker asking that the Capitol Rotunda be used for a temporary memorial to honor the troops from Iraq and Afghanistan.

This memorial would display pictures of each fallen soldier, along with bio-

graphical information, and would give visitors to the Capitol Rotunda, the People's House, an opportunity to pay tribute to the troops. They could write notes, letters, anything they want to the families, so they know in this time that they have the thoughts and the prayers of their fellow countrymen.

I have done this outside my office as an individual gesture, as the gentleman from North Carolina (Mr. JONES), a colleague of mine from the other party, has done outside his office, so you could write a note, you could write a card, some way to let this family know, whether they are from your State or not, that in this moment of pain and grief they are not alone; they have the thoughts and the prayers of their fellow countrymen.

The gentleman from North Carolina (Mr. JONES) is from the other party. This is not a Democrat or Republican issue, it is not whether you were or were not against the war; it is a way of paying respect.

Throughout our history, the Rotunda has been used for public viewing of our fallen heroes, bestowing upon them one of our Nation's highest honors. After World War I, we saluted fallen soldiers in the Rotunda. For World War II, Korea and Vietnam, we did the same. It is only fitting that we use the Capitol Rotunda to honor those who have fallen in Iraq and Afghanistan.

The war in Iraq is not over, and there will certainly be more lives lost, unfortunately. But this tribute is for all Americans, to show their respect for the men and women who paid the ultimate sacrifice, as well as to their families.

I do not often agree with President Bush, but I do agree with the sentiment he expressed in his Saturday radio address. "Since September 11, the sacrifices in the War on Terror have fallen most heavily on members of our military and their families. Our Nation is grateful to the brave men and women who are taking risks on our behalf at this hour, and America will never forget the ones who have fallen, men and women last seen doing their duty, whose names we will honor forever."

I agree with the sentiments expressed by President Bush, and I hope that the Speaker and the Republican leadership would take up those sentiments and do a temporary memorial. I am now doing it outside my office. The gentleman from North Carolina (Mr. JONES), as I mentioned, is doing it outside his office. I would ask that it no longer be an individual gesture, but it be an institutional gesture of that sentiment that the President expressed Saturday in his radio address.

Mr. Speaker, since this Congress convened, we have found time to name no less than 70 post offices, and we named another one just yesterday. I think we can, indeed, it is our duty and responsibility, find the time to properly honor those who have sacrificed everything in Iraq and Afghanistan.

Mr. Speaker, this tribute was initiated by an individual Member of the House. We should make an institutional decision today in the People's House to expand it to an institutional gesture for all people who come to the People's House to remind those families that they have our love, our respect, our prayers and our thoughts in this time.

I hope that all this body will join me in saluting their families.

DRUG IMPAIRED DRIVING ENFORCEMENT ACT OF 2004

The SPEAKER pro tempore. Pursuant to the order of the House of January 20, 2004, the gentleman from Indiana (Mr. SOUDER) is recognized during morning hour debates for 5 minutes.

Mr. SOUDER. Mr. Speaker, I would like to talk briefly about H.R. 3922, the Drug Impaired Driving Enforcement Act of 2004 that the gentleman from Ohio (Mr. PORTMAN) introduced in this House earlier this year, along with the gentleman from Michigan (Mr. LEVIN), the gentleman from Ohio (Mr. LATOURETTE) the gentleman from Minnesota (Mr. RAMSTAD) and myself.

Mr. Speaker, we often hear about drunk driving, but we have not heard enough about drug-impaired driving. Let me read some of the findings in this bill.

Driving under the influence of or after having used illegal drugs has become a significant problem worldwide. 35 million persons in the United States age 12 or older had used illegal drugs this past year, and almost 11 million of those persons age 12 or older and 31 percent in the past year had driven under the influence of or after having used illegal drugs.

This is a sobering thought when you are driving down the highway. Not only may somebody be high on alcohol, but they may be whacked out on drugs, and they may be combining the drugs, alcohol and illegal drugs to put you and your family at risk.

According to the National Highway Traffic Safety Administration, illegal drugs are used by approximately 10 to 22 percent of all drivers in motor vehicle crashes. In other words, when we talk about what the problems are on the road, we have to have illegal drugs in that mix.

Across the country, we do not have in many cases the ability to detect or prosecute, because we do not have the detection, the use of illegal drugs in automobile wrecks, particularly in higher incidence most likely of deaths than even other types of automobile wrecks. Too few police officers have been trained, and there is lack of uniformity and consistency in State laws.

What this bill would do is provide grants and money to the different States for model legislation on how to do drug-impaired driving statutes, to ensure drivers in need of drug education or treatment are identified and

provided with the appropriate assistance, to advance research and development of testing mechanisms and knowledge about drug driving and its impact on traffic safety, and to enhance the training of traffic safety officers and prosecutors to detect, enforce and prosecute drug-impaired driving laws. I hope that each Member of Congress will sponsor this bill and that we can move this bill, if not as part of the larger transportation will, as a free-standing bill.

I also wanted to call attention and will include in the RECORD this article about a DEA exhibit that highlights, among other things, the drug-impaired driving accidents. This was in USA Today yesterday, September 13, 2004, about an exhibit that is opening in One Times Square, New York City, today. It will be a three floor exhibit on the perils of drug use and what it is doing to devastate American youth, adults and people in our country, as well as around the world. The exhibit also links terror and drug traffic.

The picture here shows an automobile obliterated in a wreck, I believe in Ohio, a 1994 Ford Thunderbird, whose driver killed a woman and just obliterated the car.

We have had multiple deaths in my hometown because of drug-impaired driving, even though we have a very limited ability to test. It has been clear that the marijuana in particular has been the primary culprit. We have had multiple deaths related to meth, and in addition kids using that and taking other kids out. We even had a couple of grizzly murders where it appears the kids were either after the Ecstasy or some other drug, at the very minimum, marijuana.

In this DEA exhibit, among other things, in addition to the display regarding the automobile wrecks and the deaths due to drug-impaired driving, on the third floor they have a "Wall of Lost Talent," a display of prom, graduation and school photos of those who have died because of drugs. Visitors are encouraged to leave photos of friends and family members who have been harmed by drugs as well.

Karen Tandy, the Director of DEA, said, "I want Americans to realize that although they may not use drugs, everyone is impacted by drug use in this country. That car," and she is referring to the devastated car that caused the deaths, "represents the threat to every one of us on the road."

I am glad that the DEA administrator and the DEA is taking the message out to the general public that drug use is not just something you do at home on your own or a recreational-type thing. When you use drugs and you get behind the wheel, you are putting everybody else on the road at risk.

Mr. Speaker, I chair the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the Committee on Government Reform, and what we have heard in testimony after testimony after testimony is not

only when you go out on the road, but even in the home, is of young kids terrorized by their parents, who come home and beat them or just ignore them but use up their food money. This article also links the terrorists to drug money and much destabilization in other countries.

Mr. Speaker, it is very important that the DEA has done this, and it is very important that we pass the legislation in the House.

[From the USA Today, Sept. 13, 2004]
EXHIBIT LINKS TERROR, DRUG TRAFFIC
(By Donna Leinwand)

NEW YORK.—The crumpled green 1994 Thunderbird is a jarring sight in the lobby of One Times Square. The driver, DEA agents say, was high on cocaine, barbiturates and marijuana when he hit and killed a 31-year-old Ohio woman. The man is serving 10 years.

The car is the opening assault in an exhibit meant to lay bare the harsh world of illicit drugs from the intensely personal car accident to the global financing of rebel armies and terrorists.

Target America: Drug Traffickers, Terrorists and You is an expanded version of a drug enforcement Administration Museum traveling exhibit that opens here Tuesday.

The exhibit, housed in three floors of borrowed space, is designed to illustrate through graphic photos and artifacts the societal costs of the production, trafficking and use of illegal drugs.

"I want Americans to realize that, although they may not use drugs, everyone is impacted by drug use in this country," DEA administrator Karen Tandy says. "That car represents the threat to every one of us on the road."

The car is the centerpiece of a field of debris piled in the lobby of the tall retail-and-office building. The wreck is surrounded by drug paraphernalia and barrels of chemicals used to make methamphetamine, as well as broken toys representing children neglected by drug-addled parents.

The overriding theme of the exhibit, visible from Times Square through plate-glass windows, is the link between drug trafficking and global terrorism.

The exhibit invites visitors to trace the path of cocaine and heroin from drug labs in Afghanistan and Colombia to the pockets of insurgents in Colombia and Peru and to such terrorist organizations as Hezbollah.

But it also makes a more controversial link between terrorism and the 9/11 attacks on the World Trade Center and the Pentagon. The exhibit includes a large display of debris collected from both sites. The exhibit does not specifically tie the attacks to drug trafficking, but it uses the events to explain how terrorists use the drug trade as one of several methods to fund attacks. It cites U.S. intelligence linking the Taliban in Afghanistan, and by extension its thriving heroin economy, to Osama bin Laden and al-Qaeda.

"Someone who thinks he or she is making an individual choice that won't harm anyone else is not seeing the larger picture of where their money eventually goes," says Anthony Placido, special agent in charge of the New York division of the DEA.

In Peru, for example, Shining Path insurgents "killed thousands of people, destroyed the economy, reduced the country to rubble, and paid for it all with the cocaine trade," Placido says.

After 9/11, Americans shifted their focus from the war on drugs to the war on terror, Placido says. The exhibit, he says, will help

relate the illicit drug trade to homeland security.

"The same techniques used to smuggle in drugs can be used to smuggle in weapons of mass destruction," Placido says. Terrorists and drug criminals "fish out of the same sewer."

Although the exhibit includes the events of Sept. 11, it takes a broader look at the drug trade, tracing its history from the Silk Road routes between China and Europe, says Sean Ferans, director of the exhibit and also the small DEA museum in the agency's headquarters in Arlington, Va.

The Times Square exhibit is loaded with whiz-bang law enforcement memorabilia. Visitors can keep into an actual cocaine lab uncovered by DEA agents in Colombia, dismantled and shipped to the USA; a Stinger missile launcher; heroin tax receipts from the Taliban; Ecstasy pills; and photos of arrested drug kingpins.

On the second floor, visitors will see a replica of a crack den cluttered with soiled diapers and guns. There are photographs of children rescued from their parents' meth labs, including one who was covered in car battery acid.

A "Wall of Lost Talent" is a display of prom, graduation and school photos of those who have died because of drugs. Visitors are encouraged to leave photos of friends and family members who have been harmed by drugs.

Parts of the exhibit have traveled to other cities, including Dallas and Omaha. Sections may go on the road again; no schedule has been set. In New York, hours are 9 a.m. to 8 p.m. daily through January. Information: www.usdoj.gov/dea/deamuseum/website/index.html.

Admission is free.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 10 a.m.

Accordingly (at 9 o'clock and 21 minutes a.m.), the House stood in recess until 10 a.m.

□ 1000

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. OSE) at 10 a.m.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, as people loyal to diverse faith perspectives and hoping to be consistent in the commitment to serve the common good of the Nation, we pray today for the Members of the House of Representatives.

Lord, grant wisdom to the leaders of this Government by the people. We hear, "You, O God, give wisdom generously without finding fault to all who ask."

You provide people of faith with values, standards and principles. These need to be applied with human wisdom to specific events and recognized challenges of the times. You sustain believers, particularly in critical moments, that they may discern the real importance of needs and events and be able

to deal with times of adversity with a certain calmness and deepening hope.

For You are our saving Lord now and forever. 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 Arizona (Mr. HAYWORTH) come forward and lead the House in the Pledge of Allegiance.

Mr. HAYWORTH 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.

TWO QUESTIONS FOR DAN RATHER

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

Mr. HAYWORTH. Mr. Speaker, earlier this morning, I came to this well reflecting on the difference between holding public office and being engaged in public service. Public office is not a prerequisite for public service. Neither, Mr. Speaker, is public office a prerequisite for holding the public trust.

It is in that spirit that I again come to the well to cite apparently falsified documents utilized by CBS News in portraying the service record in the Texas Air National Guard of our Commander in Chief.

Mr. Speaker, two questions need to be answered: What did Dan Rather know, and when did he know it?

Understand, we believe in the first amendment; Congress shall make no law abridging the freedom of the press. All we ask, Mr. Speaker, is that Dan Rather answer those two questions.

SUPPORT NEW TRANSPORTATION FUNDING

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

Ms. WATSON. Mr. Speaker, America's roads are coming to a standstill because of ever-increasing congestion. The latest research shows that the average American wastes almost 2 full days a year in traffic. Measured in dollars, the cost of congestion is now \$63 billion per year. My own hometown of Los Angeles is again ranked as the most congested city in America, with congestion delays and costs twice the national average.

With this congestion causing such a drag on our economy, the American

public might expect their Congress to be rushing to resolve such a problem. But we are now almost 2 years past the deadline for passing a new transportation bill, and the administration is still blocking Congress from passing new transportation funding. The issue is, as always, money. The President, after having racked up the largest deficits in American history, is fighting to block this needed investment in roads and transit.

Mr. Speaker, my constituents are as fed up with government gridlock as they are with freeway gridlock. America needs transportation relief now.

TERROR ATTACKS ON AUSTRALIA WILL NOT DETER WAR ON TERROR

(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, last week, al Qaeda-linked terrorists savagely attacked the Australian embassy in Jakarta, Indonesia. The blast killed nine and wounded more than 180 innocent people, most of whom were Muslims. Australian Prime Minister John Howard properly responded by saying, "This is not a nation that is going to be intimidated by acts of terrorism. We are a robust, strong democracy."

Indeed, he is exactly correct. Free nations must never be intimidated by hate-filled extremists which will only lead them to commit more murderous acts. The only proper response to terror is to aggressively go on the offense as President Bush and coalition partners have done for the past 3 years. Instead of waiting for another attack, we need to bring justice to the terrorists wherever they are and hold terror-supporting regimes accountable.

Australia, Spain, Russia, Israel, America and many others have been attacked in a war started by radicals against the civilized world. Yet this campaign of fear will fail as nations who value freedom will continue to fight together to win the war on terror.

In conclusion, may God bless our troops, and we will never forget September 11.

IN SUPPORT OF DRUG REIMPORTATION

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

Mr. EMANUEL. Mr. Speaker, today, in The Washington Post, there was a story about a senior executive from Pfizer who announced that reimportation of pharmaceutical drugs was safe and could be worked out. Peter Rost, vice president of marketing for the pharmaceutical company Pfizer, publicly announced his support for drug reimportation.

In addressing the issue of safety, which the pharmaceutical companies

continue to raise as their main concern with reimportation, I want to quote this executive from Pfizer, "This has been proven safe in Europe. The real concern about safety is about people who do not take drugs because they cannot afford it. The safety issue is a made-up story." This, from an executive in Pfizer Corporation.

Mr. Speaker, today seniors are traveling to Canada and buying their medications there where they save up to 40 to 50 percent. Kaiser Foundation found that 29 percent of seniors had not filled prescriptions because they could not afford them.

The issue of safety is a hoax, and when somebody tells you it is not about money, folks, it is about money. It is time we do right by the American seniors and taxpayers.

CONGRATULATING THE FIRST BAPTIST CHURCH OF GARLAND

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

Mr. HENSARLING. Mr. Speaker, today, I would like to welcome Dr. Greg Ammons to Garland, Texas, as the new pastor of the First Baptist Church.

The First Baptist Church of Garland was founded in 1868. They currently have over 3,500 active members and offer countless mission and service opportunities for their members to help serve the community.

The First Baptist mission statement reads, "To know Jesus and make him known." I can tell you that, through their faith and through their dedication to service, they are living up to that statement and doing the Lord's work in the Garland area.

Today, I would like to offer my heartfelt welcome and prayers to Dr. Ammons, his family and his entire congregation at the First Baptist Church. I know firsthand that the members are very excited to have Dr. Ammons, Lisa and young Camden join their congregation.

May God continue to bless Dr. Ammons, the First Baptist Church of Garland, and may He continue to bless the United States of America.

THE PRESIDENT'S BUDGET RECORD

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

Mr. BLUMENAUER. Mr. Speaker, there is a certain humor in the Bush attacks on Senator KERRY's budget plans. The Bush administration, after all, has the most reckless fiscal management in our Nation's history. It has produced the largest deficit, after turning the largest budget surplus that they inherited into a sea of red ink.

His prescription drug Medicare program hid the true cost even from Republicans in Congress. His proposal to

privatize Social Security, all independent observers indicate, will cost at least \$2 trillion.

While he wastes money on missile defense, he is shortchanging homeland security, all the while proposing more tax cuts for people who do not need them while ignoring the needs of those who do. No wonder he wants to talk about JOHN KERRY's fiscal proposals. His record is indefensible.

EBAY PART OF 21ST CENTURY ECONOMY

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

Mr. DREIER. Mr. Speaker, last week, we had a great statement made by Vice President CHENEY talking about the new 21st century vibrant economy. He pointed to the fact that there are, in this new economy, 430,000 Americans who make their income, their living, selling on eBay. They are entrepreneurs.

Over the weekend, there were a number of pundits who criticized him, saying, Well, because of the slow economy, that Vice President CHENEY was advocating that people go down and find something in the basement and sell it on eBay, and that will take care of them.

The fact of the matter is, that is not what he was saying. He was talking about an industry that did not exist 10 years ago; eBay did not even exist. Today, we have got nearly half a million Americans earning their living on eBay. Frankly, if you look at the number of people who are selling things on eBay, it is in the millions.

So, Mr. Speaker, it is important for us to acknowledge that this administration and this Congress are helping us build and expand in this new 21st century economy.

THE REPUBLICANS HAVE LOST THEIR WAY

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

Mr. GEORGE MILLER of California. Mr. Speaker, what were they thinking? The Republicans that control this House look at our economy and the job losses, the declining wages and rising cost of health care, and you know what they think the problem is? That the people are earning too much overtime pay. So they decided to cut it for 6 million American families.

They look at jobs going overseas, and do you know what they think the problem is? They do not think there are enough jobs going overseas, so they continue to vote for tax credits to help companies send jobs overseas rather than create them at home.

And they look at crime in America, and do you know what they think the problem is? That there are not enough

guns and assault weapons on our streets, so they let the assault weapons ban expire and want to end the gun ban in the District of Columbia.

They look at the cost of pharmaceuticals, and they decide that they are not as expensive as the senior citizens in this country find them. So they decide they are not going to let them go to Canada. They are not going to let them reimport drugs from overseas to cut the cost of drugs. Rather, they are going to prosecute them and the governments, cities and counties that are trying to help those individuals have affordable drugs.

They have lost their way.

CONSTITUTION RESTORATION ACT PROMISES FREEDOM OF RELIGION

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

Mr. PENCE. Mr. Speaker, the American Congress in 1776 adopted a Declaration of Independence which asserted the belief that we are endowed by our creator with certain inalienable rights. In fact, the Congress that adopted the first amendment and its freedom of religion clause also established the chaplaincy and the practice, as we saw today, of opening this House in prayer.

Nevertheless, over the past 42 years, since the famous prayer in school cases, our Federal courts have showed increased hostility toward the acknowledgement of God in the public square. But as we heard yesterday before the Judiciary subcommittee, Congress can finally do something about it.

The Constitution Restoration Act simply put, Mr. Speaker, would use article III powers to deny the Federal courts jurisdiction over any case where the action is brought because a public official simply acknowledges God.

Let us restore that basic freedom of religion in the public square, the acknowledgment of God that our founders so cherished and enshrined in this institution. The freedom of religion must never become the freedom from religion. Let us pass the Constitution Restoration Act in this Congress.

AMERICA NEEDS A LEADERSHIP TRANSPLANT

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

Mr. MCDERMOTT. Mr. Speaker, among all the chaos and the economy and Iraq, the administration is belittling these days about tort reform. It is the solution to a national health care crisis, they shout. That is the closest thing to a perpetual motion machine and just as phony.

Tort reform is a smoke screen by the administration to cover its own failure to do anything about the health care

crisis. The administration squandered 4 years and did nothing on premiums, slamming Americans with double-digit increases year after year. Americans cannot find decent jobs. That is why millions do not have health care. Millions of other Americans with jobs cannot afford the premiums.

But the administration has to cover its tracks, so they launch a diversion against the lawyers, and they are blaming the other guy because JOHN KERRY actually has a health care plan.

The President has a plan. It is called more of the same; 4 more years of record profits for special interests; 4 more years of skyrocketing costs for the average American; 4 more years of failure; and a 17 percent increase for seniors.

America needs a leadership transplant, and surgery is set for the 2nd of November.

□ 1015

THE 150TH ANNIVERSARY OF THE REPUBLICAN PARTY

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

Mr. COX. Mr. Speaker, this is the 150th anniversary year of the Republican Party. Over a century and a half, from the abolition of slavery to the establishment of women's suffrage, to the freeing of millions in the Soviet Empire and Afghanistan and in Iraq, the Republican Party has been the most effective political organization in the history of the world in advancing the cause of freedom.

So that all of us can learn more about the achievements of this fundamentally American institution in its 150th anniversary year, the House Republican Policy Committee has published the 2005 Republican Freedom Calendar. Each day of the year, the calendar lists an important milestone of the Republican Party's history of advancing freedom and civil rights in America.

It was on this day in 1901, 103 years ago, that America mourned the death of Republican President William McKinley, who established an impressive civil rights record. To show his support for African Americans, President McKinley defied Democrat protests to travel to Alabama and deliver an address at the Tuskegee Institute, which was founded by the celebrated African American Republican Booker T. Washington.

Mr. Speaker, the calendar is available on line at policy.house.gov.

BUSH PROPOSALS

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

Mr. PALLONE. Mr. Speaker, Republicans are at it again. President Bush yesterday attacked Senator KERRY's

budget plan; yet President Bush has presided over the biggest budget deficit in our Nation's history.

Now it appears all the domestic proposals President Bush listed off during his convention acceptance speech will cost \$3 trillion over 10 years. That is at least \$1 trillion more than the initiatives that Senator KERRY has proposed.

And despite this huge price tag, President Bush continues to deceive the American people by telling them that this can all be done without raising taxes on one single American. Over the past 4 years, we have gone from record surpluses to record deficits. It is because we have a man in the White House and leaders here in Congress who simply cannot balance a checkbook.

It is time for the President to level with the American people. He simply cannot afford all these new proposals without either raising taxes or increasing the deficit even more.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. OSE). The Chair will remind all Members that remarks in debate may not engage in personalities toward the President or the Vice President, or the acknowledged candidates for those offices.

Policies may be addressed in critical terms. But personal references of an offensive or accusatory nature are not proper.

PROVIDING FOR CONSIDERATION OF H.R. 4571, LAWSUIT ABUSE REDUCTION ACT OF 2004

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 766 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 766

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. 4571) to amend rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes. The bill shall be considered as read for amendment. The amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as adopted. The previous question shall be considered as ordered on the bill, as amended, and on any further amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill, as amended, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) the further amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Turner of Texas or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for 40 minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

The resolution before us is a well-balanced, modified closed rule that provides for 1 hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The rule waives all points of order against consideration of the bill and provides that the bill shall be considered as read for amendment. The rule provides that the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill shall be considered as adopted and also makes in order the amendment printed in the Committee on Rules report accompanying the resolution, if offered by the gentleman from Texas (Mr. TURNER) or his designee. This amendment shall be considered as read and shall be debatable for 40 minutes equally divided and controlled by the proponent and the opponent.

Finally, this rule waives all points of order against the amendment printed in that report and provides for one motion to recommit with or without instructions.

Mr. Speaker, I rise today in strong support of the rule for H.R. 4571, the Lawsuit Abuse Reduction Act of 2004, as well as the underlying legislation. This bill offered by the gentleman from San Antonio, Texas (Mr. SMITH), my good friend, is carefully constructed legislation that will create a disincentive for attorneys and plaintiffs to file many of the frivolous lawsuits that currently clog our court system and act as a drain on our Nation's economy.

Just 6 months ago almost to the day, I came to the floor to manage the rule for H.R. 339, the Personal Responsibility in Food Consumption Act. Later that day the House voted overwhelmingly by a vote of 267 to 139 to require courts to dismiss frivolous lawsuits seeking damages for injuries resulting from obesity and its intended health problems that are filed against the producers and sellers of food. Through passing this legislation today, we have another opportunity to help bring our tort system back to reality by amending the Federal Rules of Civil Procedure to impose greater attorney and client accountability for pursuing other frivolous or nuisance lawsuits.

Our current tort system costs American consumers well over \$200 billion a year, the equivalent of a 5 percent tax on wages. Our courts today handle cases ranging from legitimate claims to those that are highly suspect and wasteful of time and resources. Some of these examples of lawsuit abuse in-

clude a woman in Knoxville, Tennessee, who sought \$125,000 in damage against McDonald's, claiming a hot pickle dropped from a hamburger, burned her chin and caused her mental injury. Her husband also sued for \$15,000 for loss of consortium. Or the case of the Girl Scouts of America in metro Detroit, who have to sell 36,000 boxes of cookies each year just to pay for their liability insurance. In fact, according to a former Girl Scout from the greater Philadelphia, Pennsylvania area, frivolous litigation is making it increasingly hard for them to even sell their cookies and their local convenience stores will no longer allow these girls to set up their booths anymore for fear of liability issues.

This economic drain, created by frivolous lawsuits on American productivity, is unacceptable and prevents the American economy from being as competitive as it should be with the rest of the world.

H.R. 4571 will help to discourage the filing of frivolous lawsuits by restating several important provisions to rule 11 of the Federal Rules of Civil Procedure that were changed in 1993 and add several new deterrents against baseless claims. In short, this legislation will make rule 11 sanctions against attorneys or parties who file frivolous lawsuits mandatory rather than discretionary. It will remove rule 11 safe harbor provisions that currently allow parties and their attorneys to avoid sanctions for making frivolous claims by withdrawing them within 21 days after motions for sanctions that have been filed. It implements a "three strikes and you're out" provision that would disbar any lawyer for at least 1 year that filed three frivolous lawsuits in Federal court. It allows for rule 11 sanctions for frivolous or harassing conduct during discovery, and it allows monetary sanctions, including attorney fees and compensation against a represented party.

The Lawsuit Abuse Reduction Act also provides new protections against frivolous lawsuits such as extending rule 11 sanctions to State cases that affect interstate commerce, and reducing forum shopping by requiring that a plaintiff in a civil tort action may sue only where he or she lives or was injured or where the defendant's principal place of business is located.

A recent poll found that 83 percent of likely voters believe that there are too many lawsuits in America and 76 percent believe that lawsuit abuse results in higher prices for goods and services. Another poll found that 73 percent of Americans support requiring sanctions against attorneys who file frivolous lawsuits, just as H.R. 4571 would do.

Small businesses, the engine of job growth in our economy, rank the cost and availability of liability insurance as second only to the costs of health care as their top priority, and both problems are fueled by frivolous lawsuits. A recent report by AEI-Brookings Joint Center for Regulatory Studies has concluded: "The tort liability

price tag for small businesses in America is \$88 billion a year” and that “small businesses bear 68 percent of the business tort liability cost but only take in 25 percent of the business revenue.” The small businesses studied in this report account for 98 percent of the total number of small businesses with employees in the United States.

Mr. Speaker, I believe it is time for Congress to listen to what the average Americans say about frivolous lawsuits. It is time for us to hear the concerns of small businessmen and -women in our communities, along with consumers, who list frivolous lawsuits as one of their greatest impediments to success.

And it is time for us to get serious about encouraging economic growth, job creation, and international competitiveness by ending the practice that keeps our economy from thriving. The choice presented by this legislation is stark and clear and will demonstrate whether we support the frivolous actions of the trial lawyer and the drain that they place on the American economy or whether we support American workers and businesses.

I encourage all of my colleagues to stand up for our economy and for consumers by supporting this rule and the underlying legislation.

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

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

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

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman from Texas (Mr. SESSIONS) for yielding me the customary 30 minutes.

Mr. Speaker, I rise in opposition to this rule and in opposition to H.R. 4571, the so-called Frivolous Lawsuit Protection Act.

Today the Republican leadership of this body continues willful disregard for the American public. Once again we are considering legislation in the shadow of the November elections, and once again the Republican leadership is catering to big business at the expense of the public good. And once again that leadership is squandering the House's limited time with foolish, misguided special interest legislation.

This is a bill that attempts to turn back the judicial clock by over a decade; and in the process, more pressing issues and priorities are ignored. Mr. Speaker, this simply is not needed.

Yesterday the Federal Assault Weapons Ban died at the hands of the Republican leadership. President Bush, who, during his first campaign, said he saw no reason for such weapons to be on the street, indicated on more than one occasion that he would sign a new bill if the Republican-controlled Congress sent him one. But the Republican leadership refused to bring the reauthorization up for a vote. I believe they prevented a vote to protect President Bush from having to sign or veto the

reauthorization of the Federal Assault Weapons Ban. Why? Because doing the bidding of the gun lobby is their priority. Apparently the Republican strategy in homeland security includes defying law enforcement by making these military-style assault weapons more available.

□ 1030

Mr. Speaker, in addition to failing to act on the Federal assault weapons ban this week, the Republican leadership has scheduled zero time, that is zero time, to consider the 9/11 Commission's recommendations. The Commission took a hard and comprehensive look at the intelligence and homeland security needs of our country. They asked Congress to do its job, to take a hard look at the way this House organizes and carries out its works, ways that potentially undercut the security of our Nation and our people. Yet, today, in this House, it is business as usual, with special interest legislation on the House floor. Six weeks have passed since the Commission's report was first issued, and we still have no firm date as to when this House will take up legislation and debate the Commission's recommendations.

Will it be before Congress breaks for elections? Will we have to wait for another September 11 anniversary to come and go before we take up the Commission's findings? Or, like today, will this body continue to waste its time on frivolous legislation?

The Republican leadership in both parties of Congress has failed to pass a budget resolution, but we are not talking about that today. And today we begin one more legislative week without a transportation bill. We certainly are not working on a bill to increase the minimum wage, even though wages are stagnant and over 4 million Americans have fallen out of the middle class into poverty since George Bush became President. In fact, the Bush administration and the Republican Congress are on track to have the worst jobs record since the Great Depression, all the way back to Herbert Hoover. The average length of unemployment is at a 10-year high, and manufacturing employment remains at a 53-year low. Yet, this House does not seem to have the time to do anything to help the millions of Americans who have lost their jobs. No extension of unemployment benefits, no help for the millions of uninsured Americans, and certainly, no effort to reduce gas prices or lower the cost of college tuition, or pass a highway bill that might create good-paying jobs.

No, Mr. Speaker, we are not taking up legislation to address these issues today.

Mr. Speaker, if the American public wants real leadership on real issues, they should not look here for help. Indeed, this body is guilty of willful neglect of America's priorities. Why do we not work on a bill to help the millions of uninsured Americans? Over 70

percent of the uninsured live in households with at least one worker, and yet we sit idly by as more and more Americans work in jobs that provide little or no health care benefits.

Instead, here we are, taking up H.R. 4571, the so-called Frivolous Lawsuit Reduction Act, a bill that does nothing to address the real problems facing working families of America, yet does so much to help the special interests who fill the campaign coffers of the majority.

Among its provisions, H.R. 4571 would turn back the clock to the pre-1993 provision of Rule 11 of the Federal Rules of Civil Procedure, provisions that were changed on the recommendation of the Judicial Conference after years of study, approved by the U.S. Supreme Court, and reviewed by Congress in accordance with the Rules Enabling Act.

What will this bill change? The supporters of H.R. 4571 contend that it would help reduce frivolous lawsuits. That is what they say. But in reality, the bill would have a terrible effect on credible claims brought by families, workers, consumers, and senior citizens.

Without many of these civil lawsuits, the following changes in consumer products would likely never have occurred: The redesign of defective baby cribs so that they no longer strangle infants; flammable children's pajamas taken off the market; the redesign of harmful medical devices; the strengthening of auto fuel systems so that they do not blow up upon impact; the addition of basic safeguards to dangerous farm machinery; and the elimination of asbestos so that workers are no longer poisoned in their workplaces.

Mr. Speaker, instead of providing more protections for the average American, the Republican leadership actually provides protections for, get this, the “Benedict Arnold corporations” who reincorporate in a foreign tax shelter only to avoid paying U.S. taxes. Specifically, this bill protects these Benedict Arnold corporations from lawsuits American citizens could file if they are injured by those corporations' products. Unbelievable. The bill limits the venue of a lawsuit against a corporate defendant to either the place the injury happened or the jurisdiction where “the defendant's principal place of business is located.” If a foreign corporation does not do significant business in a place where the injury occurred, a plaintiff cannot sue a corporation headquartered outside the United States. In other words, a person injured by a defective product would be able to sue a U.S. corporation in its principal place of business, but he or she would often have no way to seek redress against a foreign corporation.

Now, the gentleman from Texas (Mr. TURNER) attempted to fix this provision. While the Republican leadership actually made the Turner amendment in order, they did so only after a provision intended to hold these Benedict Arnold corporations accountable for

their actions in the United States was removed from the amendment. The provision the Republican leadership removed from the Turner amendment defines Benedict Arnold corporations as U.S. companies that set up corporate shells in foreign countries in order to escape U.S. tax liability and other U.S. regulatory duties.

In other words, Mr. Speaker, the one proposal that was intended to protect people, not corporations, was left on the Committee on Rules floor last night. The Republican leadership does not want the American people to know that their bill puts Benedict Arnold corporations ahead of American consumers. This is just one example of the Republican leadership bending over backwards for special interests, while ignoring the real issues facing the American people. I hope my friend, the gentleman from Texas (Mr. SESSIONS), will take the time during this debate to explain to the American people why the Republican leadership continues to protect Benedict Arnold companies instead of fighting for American jobs here at home.

But, then again, today's debate is not about the real issues confronting the American people; it is all about distraction. If we waste enough time on this bill, maybe the American people will not have time to ponder the failures and the lack of action by the Republican-controlled Congress on our most pressing priorities. It is a cynical ploy, and I hope that the American people recognize it.

I urge my colleagues to reject H.R. 4571.

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

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

Republicans do listen to Democrats, and we have had a number of times where the Republican Party, the majority party, has talked about tort reforms and other issues that are important to consumers.

One of the persons that we have listened to repeatedly in this debate is perhaps one of the most successful trial lawyers who is now a United States Senator, and his name is JOHN EDWARDS. Senator EDWARDS has written in Newsweek that "lawyers who bring frivolous lawsuits should face tough mandatory sanctions with the '3-strikes' penalty." That is what Mr. EDWARDS has said. Senator EDWARDS has also said that he "believes we need a national system in place that will weed out meritless lawsuits." That is exactly what H.R. 4571 would do.

We are listening to the American people. We are listening to people who are lawyers who are engaged in the business of advocating on behalf of people who have been harmed. But sometimes those people know most about the system, as Senator JOHN EDWARDS, who knows best that we need to reform the system. That is what we are doing here today. I do appreciate the opportunity to have Senator EDWARDS' re-

marks that were in Newsweek magazine included today, because I think it is important for the American public to hear that.

Mr. Speaker, I yield 3 minutes to the gentleman from Bristol, Indiana (Mr. CHOCOLA).

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

Mr. Speaker, I rise today in support of this rule and in support of the Lawsuit Abuse Reduction Act, and I do so because I have seen firsthand the very destructive nature that frivolous lawsuits have on our country, on our job creation, and on our health care costs.

Before coming to Congress I was in the private sector and ran a business, and every year we spent hundreds of thousands of dollars on liability insurance in an attempt to protect ourselves and our employees from frivolous lawsuits. We spent millions of dollars every year on inflated health care costs for our employees, and those suits that were filed against us were usually settled and they were usually settled in a fashion where the lawyers got millions of dollars and the plaintiffs essentially got pennies. In the end, we spent millions of dollars every single year to protect ourselves against frivolous lawsuits and to get rid of frivolous lawsuits.

Instead of spending millions of dollars on frivolous lawsuits, it would have been much more productive to spend that money on creating more jobs and lowering the health care costs for our employees. Every year frivolous lawsuits cost our economy \$233 billion. That is 2.23 percent of our GDP, and it costs \$109 for every single person in America.

Mr. Speaker, I do not think there are many things that we could do to give our economy a boost, to help American companies compete better in a global marketplace, than ending frivolous lawsuits. So I encourage all of my colleagues to support this rule and to support the Lawsuit Abuse Reduction Act.

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

The gentleman from Texas (Mr. SESSIONS), I am happy to yield to him 30 seconds to answer the question that I asked in my opening statement and that is, why did you remove this section of the Turner amendment that held Benedict Arnold corporations accountable? Why do you feel that we need to protect companies who purposely open up P.O. boxes in Bermuda so that they can escape paying U.S. taxes? Even if you support paying Benedict Arnold corporations, why can we not have at least an up or down vote on an amendment so that the House can decide?

I am happy to yield to the gentleman 30 seconds so that he can clarify that for me.

Mr. SESSIONS. Mr. Speaker, I thank the gentleman for yielding, and I am pleased to respond. First of all, I would like to say that the gentleman from

Texas (Mr. TURNER) requested its removal.

Secondly, I would like to say that the provision actually allows a covered company under this provision that they have the absolute right not only to remove their case to Federal court, but they can remove the case to any Federal court in the country that they would like, and that they can pick the Federal court if they have one, wherever the Federal court is, and have the case there; whereas our bill prevents unfair forum shopping by making sure that cases are actually brought in States that actually have a connection to the case.

As the gentleman may be aware, there are abuses that take place all across this country, including in Illinois and Mississippi, where there are cases that are accepted by courts where no one actually even lives in those jurisdictions.

I thank the gentleman for asking for a response.

Mr. MCGOVERN. Mr. Speaker, reclaiming my time, I appreciate the gentleman's response, but it really did not answer my question, and I yield myself such time as I may consume.

The bottom line is the gentleman from Texas (Mr. TURNER) decided not to pursue his amendment only after he was told by the leadership of this House that he could not have the language he wanted, and the companies that we are talking about here, these Benedict Arnold companies, are not in individual States, they are in places like Bermuda.

I just think it is outrageous that these companies that really skirt U.S. tax law, and I think are not the kind of corporations that deserve to be protected, are in fact protected in this bill, and I think it is wrong.

Mr. Speaker, I would like to insert in the RECORD the complete text of the amendment that the gentleman from Texas (Mr. TURNER) wanted to offer and was told that he could not offer because I think it is instructive for the American people to at least have on record what he tried to do.

SEC. 6. ACCOUNTABILITY FOR BENEDICT ARNOLD CORPORATIONS.

(a) JURISDICTION.—In any civil action concerning an injury that was sustained in the United States and in which the defendant is a Benedict Arnold corporation, any Federal court in which such action is brought shall have jurisdiction over such defendant.

(b) SERVICE OF PROCESS.—Process in an action described in subsection (a) may be served wherever the Benedict Arnold corporation is located, has an agent, or transacts business.

(c) DEFINITIONS.—For purposes of this subsection:

(1) The term "Benedict Arnold corporation" means a foreign corporation that acquires a domestic corporation in a corporate repatriation transaction.

(2) The term "corporate repatriation transaction" means any transaction in which—

(A) a foreign corporation acquires substantially all of the properties held by a domestic corporation;

□ 1045

(B) shareholders of the domestic corporation, upon such acquisition, are the beneficial owners of securities in the foreign corporation that are entitled to 50 percent or more of the votes on any issue requiring shareholder approval; and

(C) the foreign corporation does not have substantial business activities (when compared to the total business activities of the corporate affiliated group) in the foreign country in which the foreign corporation is organized.

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

Mr. SESSIONS. Mr. Chairman, I yield 5 minutes to the gentleman from Georgia (Mr. LINDER), a member of the Committee on Rules.

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

Mr. Speaker, I rise in strong support of H. Res. 766, a modified, closed rule for H.R. 4571, the Lawsuit Abuse Reduction Act of 2004. This is a fair rule which provides for consideration of this important legislation and gives the minority an opportunity to offer a substitute amendment for the full House to consider.

With regard to the underlying measure, I support placing some level of accountability upon those who would otherwise unnecessarily burden our Nation's judicial system. While most tort reform measures focus primarily on the amount of damages one can collect through civil actions, little is ever said, much less done, to admonish the individuals who are the cause of the unnecessary litigation. As a matter of reason, we all agree that individuals should be given the right to seek redresses for certain grievances through civil litigation, as long as those claims are legitimate in their nature. After all, it is the responsibility of this Nation's judicial system to uphold the rights and liberties of the American citizen.

Our system of justice is flawed, however, in that it fails to incorporate checks upon those who would use it for other either malevolent means or personal gain. Under current law, for example, a lawyer who files a blatantly frivolous lawsuit in violation of Rule 11 may actually avoid punishment as long as he or she withdraws the filing within 21 days after the opposing party has filed a motion for sanctions. Judicial filings, whether legitimate or frivolous, bring cost burdens to both parties involved and the government, and these costs, most notably attorneys fees, do not evaporate once the frivolous claim has been withdrawn.

H.R. 4571, however, corrects these shortcomings by imposing reasonable standards of responsibility on the legal community and preventing lawyers from circumventing Rule 11. Most importantly, this legislation sends out a clear message that our judicial system was intended to protect the rights of the aggrieved, not to provide wealth to those who would profit from the aggrieved. As such, I am hopeful that my colleagues will join me in support of this bill.

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

Mr. Speaker, I urge my colleagues to reject H.R. 4571, and I ask that they support the substitute that will be offered by the gentleman from Texas (Mr. TURNER).

The Turner substitute is a stronger bill and addresses the real needs of the American public. The Turner substitute respects all Americans by setting up other three strikes and you are out systems while protecting civil rights lawsuits. The Turner substitute also prevents corporate wrongdoers from sealing their activities in court records. And the Turner substitute requires States to put into action a system to speed up the trial process and eliminate junk lawsuits.

Let me again state for the record, Mr. Speaker, that it is frustrating and it is mind boggling to me that the Republican leadership insists that the Turner substitute not include language that would hold Benedict Arnold corporations accountable. What is the deal?

Why does the Republican leadership not only on this bill but on so many other bills in which we try to hold these companies accountable insist on bending over backwards to protect them. These are companies that purposefully set up P.O. boxes in places like Bermuda to avoid paying U.S. taxes. There is no citizen in this country that can do that. But these corporations that make millions and millions, if not billions of dollars get to do that, get to take advantage of all the benefits of this country, but do not have to pay U.S. taxes and here they are being protect from lawsuits if in fact they produce a damaging product.

It is wrong. It is outrageous. This should not be happening, and I would again just say that it is sad that we are at this point.

Mr. Speaker, I would urge the adoption again of the Turner substitute and the rejection of this ill-conceived, ill-advised bill, and I would urge my colleagues to vote no on H.R. 4571.

Mr. Speaker, I yield back the balance of my time.

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

Mr. Speaker, today, as I had stated, this is balanced legislation that is important to consumers. It is important to judges who sit to make themselves ready for those lawsuits that are necessary to make wise decisions on. But frivolous lawsuits are clogging our courts.

Mr. Speaker, I would remind this body that we have debated numerous tort reform issues, and one which was decided as a local issue in Texas was about medical malpractice, tort reform for medical malpractice. It was passed last year. It became law in January of this year. And one of the most important health care systems in Texas, a company called Christus HealthCare Systems, has announced earlier this

month that as a result of those tort reform changes in Texas, they are able to put \$21 million that previously they had set aside for lawsuits, that would go right back into their hospitals, to health care, to retraining of their employees, to make their system better, to make health care work better for every single consumer, and most of all to hire more nurses which is where the shortage was in their hospital.

Tort reform issues and ideas work but so do those things like we are doing today, H.R. 4571, that says we are going to alleviate and stop frivolous lawsuits from clogging our courts. I would remind this wonderful body that the young chairman, the gentleman from San Antonio, Texas (Mr. SMITH), has worked very diligently to ensure that this is balanced legislation that was brought to the floor, as he appeared yesterday in the Committee on Rules to talk about the need for this. I think we are listening to the special interests and we admit in the Republican Party we do have a specialty interest, they are call consumers. They are called taxpayers. And those special interest people that the Republican Party represents, we will continue to do so with common sense legislation that will allow the United States Congress to speak on issues that are important.

Mr. Speaker, I encourage all of my colleagues to stand up to support not only this rule but also the underlying legislation that is good for consumers. It is good for small businesses. It is good to ensure that America's economic growth continues. And most of all, it is good for the people, like Senator EDWARDS noted, who are there on the front line in our courts who say that frivolous lawsuits must end. The United States Congress will speak today. Every single Member of this body will have a chance to make that firm decision whether we want to end frivolous lawsuits or whether we are going to allow the status quo.

I urge my fellow Members to please support this underlying legislation and we will make a strong statements on behalf of consumers.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to the rule issued by the Committee on Rules for H.R. 4571, the Lawsuit Abuse Reduction Act of 2004.

As I mentioned during the Committee on the Judiciary's oversight hearing on this legislation and reiterated in my statement for the markup, one of the main functions of that body's oversight is to analyze potentially negative impact against the benefits that a legal process or piece of legislation will have on those affected. The base bill before the House today does not represent the product of careful analysis and therefore, it is critical that Members be given the ability to offer amendments to improve its provisions.

In the case of H.R. 4571, the Lawsuit Abuse Reduction Act, the oversight functions of the Judiciary Committee allowed us to craft a bill that will protect those affected from negative impacts of the shield from liability that it proposes. This legislation requires an overhaul in

order to make it less of a misnomer—to reduce abuse rather than encourage it.

The goal of the tort reform legislation is to allow businesses to externalize, or shift, some of the cost of the injuries they cause to others. Tort law always assigns liability to the party in the best position to prevent an injury in the most reasonable and fair manner. In looking at the disparate impact that the new tort reform laws will have on ethnic minority groups, it is unconscionable that the burden will be placed on these groups—that are in the worst position to bear the liability costs.

When Congress considers pre-empting State laws, it must strike the appropriate balance between two competing values—local control and national uniformity. Local control is extremely important because we all believe, as did the Founders two centuries ago, that State governments are closer to the people and better able to assess local needs and desires. National uniformity is also an important consideration in federalism—Congress's exclusive jurisdiction over interstate commerce has allowed our economy to grow dramatically over the past 200 years.

This legislation would reverse the changes to Rule 11 of the Federal Rules of Civil Procedure (FRCP) that were made by the Judicial Conference in 1993 such that (1) sanctions against an attorney whose litigation tactics are determined to harass or cause unnecessary delay or cost or who has been determined to have made frivolous legal arguments or unwarranted factual assertions would become mandatory rather than discretionary to the court, (2) discovery-related activity would be included within the scope of the rule, and (3) the rule would be extended to State cases affecting interstate commerce so that if a State judge decides that a case affects interstate commerce, he or she must apply rule 11 if violations are found.

This legislation strips State and Federal judges of their discretion in the area of applying rule 11 sanctions. Furthermore, it infringes States' rights by forcing State courts to apply the rule if interstate commerce is affected. Why is the discretion of the judge not sufficient in discerning whether rule 11 sanctions should be assessed?

If this legislation moves forward in this body, it will be important for us to find out its effect on indigent plaintiffs or those who must hire an attorney strictly on a contingent-fee basis. Because the application of rule 11 would be mandatory, attorneys will pad their legal fees to account for the additional risk that they will have to incur in filing lawsuits and the fact that they will have no opportunity to withdraw the suit due to a mistake. Overall, this legislation will deter indigent plaintiffs from seeking counsel to file meritorious claims given the extremely high legal fees.

Furthermore, H.R. 4571, as drafted, would allow corporations that perform sham and non-economic transactions in order to enjoy economic benefits in this country.

This is a bad rule that will have terrible implications on our legislative branch, and I ask that my colleagues defeat the rule, defeat the bill, and support the substitute offered by Mr. TURNER. We must carefully consider the long-term implications that this bill, as drafted, will have on indigent claimants, the trial attorney community, and facilitation of corporate fraud.

Mr. SESSIONS. Mr. Speaker, 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. OSE). The question is on the resolution.

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

Mr. MCGOVERN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3369) to provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices.

The Clerk read as follows:

H.R. 3369

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 "Nonprofit Athletic Organization Protection Act of 2003".

SEC. 2. DEFINITIONS.

In this Act:

(1) **ECONOMIC LOSS.**—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) **HARM.**—The term "harm" includes physical, nonphysical, economic, and non-economic losses.

(3) **NONECONOMIC LOSS.**—The term "noneconomic loss" means any loss resulting from physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(4) **NONPROFIT ORGANIZATION.**—The term "nonprofit organization" means—

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(5) **NONPROFIT ATHLETIC ORGANIZATION.**—The term "nonprofit athletic organization" means a nonprofit organization that has as one of its primary functions the adoption of rules for sanctioned or approved athletic competitions and practices. The term includes the employees, agents, and volunteers of such organization, provided such individuals are acting within the scope of their duties with the nonprofit athletic organization.

(6) **STATE.**—The term "State" includes the District of Columbia, and any commonwealth, territory, or possession of the United States.

SEC. 3. LIMITATION ON LIABILITY FOR NONPROFIT ATHLETIC ORGANIZATIONS.

(a) **LIABILITY PROTECTION FOR NONPROFIT ATHLETIC ORGANIZATIONS.**—Except as provided in subsections (b) and (c), a nonprofit athletic organization shall not be liable for harm caused by an act or omission of the nonprofit athletic organization in the adoption of rules for sanctioned or approved athletic competitions or practices if—

(1) the nonprofit athletic organization was acting within the scope of the organization's duties at the time of the adoption of the rules at issue;

(2) the nonprofit athletic organization was, if required, properly licensed, certified, or authorized by the appropriate authorities for the competition or practice in the State in which the harm occurred or where the competition or practice was undertaken; and

(3) the harm was not caused by willful or criminal misconduct, gross negligence, or reckless misconduct on the part of the nonprofit athletic organization.

(b) **RESPONSIBILITY OF EMPLOYEES, AGENTS, AND VOLUNTEERS TO NONPROFIT ATHLETIC ORGANIZATIONS.**—Nothing in this section shall be construed to affect any civil action brought by any nonprofit athletic organization against any employee, agent, or volunteer of such organization.

(c) **EXCEPTIONS TO NONPROFIT ATHLETIC ORGANIZATION LIABILITY PROTECTION.**—If the laws of a State limit nonprofit athletic organization liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit athletic organization to adhere to risk management procedures, including mandatory training of its employees, agents, or volunteers.

(2) A State law that makes the nonprofit athletic organization liable for the acts or omissions of its employees, agents, and volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

SEC. 4. PREEMPTION.

This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to the rule-making activities of nonprofit athletic organizations.

SEC. 5. EFFECTIVE DATE.

(a) **IN GENERAL.**—This Act shall take effect on the date of enactment of this Act.

(b) **APPLICATION.**—This Act applies to any claim for harm caused by an act or omission of a nonprofit athletic organization that is filed on or after the effective date of this Act

but only if the harm that is the subject of the claim or the conduct that caused the harm occurred on or after such effective date.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

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. 3369.

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 such time as I may consume.

Mr. Speaker, I urge my colleagues to join me in voting for H.R. 3369, the Nonprofit Athletic Organization Protection Act of 2003. I would like to thank the bill's sponsor, the gentleman from Indiana (Mr. SOUDER) for bringing attention to this issue and offering this legislation.

Volunteer athletic organizations play an important role in the lives of children and communities throughout the country. Rulemaking bodies that set standards and uniform rules for sports play a vital role in facilitating a broad range of athletic competition. Nonprofit rulemaking bodies, such as Little League baseball or Pop Warner football, rely on the expertise of volunteers to establish rules for athletic competition and training that promote sportsmanship, preserve sports traditions, ensure fair and competitive play, and minimize risk to participants.

As we know, almost all athletic competition carries risks to those who participate, and accidents do occur when young men and women are flying about on fields and courts and rinks. But rulemaking is a predictive endeavor, and rulemakers do not have the advantage of 20–20 hindsight when they make rules for competition. Unfortunately, no rule book can prevent injuries from occurring in the games that we play and love.

What we also know after multiple lawsuits is that when those accidents occur sometimes the very nonprofit athletic organizations that seek to minimize risk to athletes have become the targets of costly, protracted, and often frivolous litigation based on harm that occurs in the course of a sporting event. Over the last several years nonprofit athletic organizations have been subject to mounting legal assault.

Egregious examples are all too common. One Little League organization chose to avoid the threat of massive damages by settling a claim by a parent who was hit by a ball her own child failed to catch. In another example,

lawyers for a youth who suffered an injury in a volunteer sponsored and supervised Boy Scout game of touch football filed a multimillion dollar lawsuit against the adult supervisors and the Boy Scouts of America.

The explosion in the number of lawsuits against volunteer athletic organizations has had a corresponding impact on the price of insurance premiums these organizations are required to carry. According to the National High School Federation, for example, liability insurance rates for high school athletic organizations have spiked 300 percent over the last 3 years.

In the short term, these increases divert resources from safety programs and equipment that reduce the risk of these injuries to athletes. If this trend continues to escalate, rulemaking authorities may be driven out of existence.

H.R. 3369, the Nonprofit Athletic Organization Protection Act, would stem the growing tide of lawsuits against the range of nonprofit youth and high school athletic rulemaking bodies for rules that govern competition in the field. The legislation merely protects nonprofit athletic organizations from legal assault if harm was not caused by that organization's misconduct.

Critically, this legislation would effect only a limited category of claims against the nonprofit rulemaking organizations, and all claims for willful misconduct, gross negligence or reckless misconduct would still be actionable. Nothing in this legislation provides liability relief for a school or a school district holding a competition or for coaches or officials supervising or conducting a game.

The legislation also provides deference to States by preserving any State law that affords additional protection from liability relating to the rulemaking activities of the nonprofit athletic organization. The bill is a narrowly tailored, common sense remedy to a very serious and growing threat to volunteer athletic organizations.

If we fail to act, some of these valuable organizations will close up shop. If we fail to act, youth sports and those who play them will ultimately suffer. I urge my colleagues to support the legislation.

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

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask the gentleman if this is the same bill that was reported from committee, because there were other drafts floating around in the last couple of days.

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

Mr. SCOTT of Virginia. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, the answer is yes. This bill is in the form that was reported from committee and it is also in the form that it was introduced by the gentleman from Indiana (Mr. SOUDER).

Mr. SCOTT of Virginia. Reclaiming my time, Mr. Speaker, I oppose the legislation that is drafted. H.R. 3369 provides immunity for nonprofit athletic organizations from lawsuits in the adoption of rules for sanctioned or approved athletic competitions or practices. This legislation would virtually eliminate any valid claims from being brought forth.

Specifically, the legislation does not differentiate between meritorious lawsuits and frivolous lawsuits. H.R. 3369 prohibits civil litigation of any grievance arising under the rules promulgated by the nonprofit sporting organization. It exempts the athletic organization from liability for harm caused by an act or omission of the adoption of rules for sanctioned or approved athletic competitions or practices if the organization was acting within the scope of its duties, the organization was properly licensed, certified or authorized for the competition or practice, and the harm was not caused by the organization's willful or criminal misconduct, gross negligence, or reckless misconduct.

So while lawsuits filed by parents because their child was not put on a team may rightly be dismissed, cases with legal merit such as a rule that endangers the life of a child would also be dismissed.

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In effect, this legislation would effectively bar them from their day in court, and H.R. 3369 would dramatically obstruct valid discrimination claims or other kinds of discrimination claims against such athletic organizations. Such lawsuits call attention to public safety hazards and discriminatory acts and need to be available for litigation to protect our Nation's children.

As drafted, the broad immunity H.R. 3369 extends to nonprofit organizations reaches far beyond the potential for frivolous lawsuits in our Federal judicial system. H.R. 3369 prohibits civil litigation of any grievance arising out of the rules promulgated by nonprofit organizations.

As drafted, this legislation is so broad that it would bar legitimate issues from being brought forth. Thus, such cases as discrimination, antitrust, labor, environmental and other important claims would not be allowed to go forward.

Additionally, H.R. 3369 protects the right of a nonprofit organization to sue others. If the legislation is designed to suppress unnecessary litigation altogether, how is an organization's grievance legitimate but individual complaints are not?

Written to suppress only the outlets available for individual citizens, this legislation simply overreaches. It is the height of hypocrisy to suggest that these organizations should be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

Mr. Speaker, previous immunity statutes like this would immunize coaches, volunteers and board members, but the injured party, somebody injured through no fault of their own, would have recourse against the organization.

This bill leaves the injured party without any recourse at all.

There are serious problems with this legislation, so I would urge my colleagues to oppose the bill.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana (Mr. SOUDER), the author of the bill.

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

Mr. SOUDER. Mr. Speaker, I want to thank the chairman for moving this bill. I very much appreciate his leadership in the whole area of tort reform and particularly appreciate his willingness to move this bill.

I also would like to thank the original cosponsors of the bill, the gentleman from Maryland (Mr. WYNN), the gentleman from Nebraska (Mr. OSBORNE), the gentleman from Washington (Mr. HASTINGS), the gentleman from New York (Mrs. KELLY) and the gentlewoman from Colorado (Mrs. MUSGRAVE).

My colleagues have heard some of the opening debate on this, and let me say, to put this in realistic terms, in a new book by the gentleman from Illinois (Speaker HASTERT), he talks about how he injured his shoulder off-season practicing wrestling. Then he wanted to play football, and his coach and the association rules outfitted him in a shoulder pad, and he played with pain. He goes through a number of things that he and his good friend Tom Jarman did with that shoulder. Then he went through the wrestling season. Then he had surgery.

The question is and the plain truth is, under today's society, he could have sued the State of Illinois blind. He could have sued his school. He could be as outrageous as some of these other people because, in wrestling and football, occasionally people get hurt. And it does not give people the right to sue the schools and to make it hard for every other kid to play the sport.

What we have seen in this country, just recently, costs of lawsuits have gone out of control. One provider has informed us that they have gone up 300 percent; another one, 600 percent. One has dropped coverage of all high school associations and Little Leagues and Pop Warners. Three more are considering it.

Their costs are going up every year faster than they can charge assessments. One governing body that provides for 5,000 athletes, some of the elite athletes in the country, for an Olympic sport has had a 1,000 percent increase in their costs. How are they supposed to deal with this? Who pays for this?

Often, it is the taxpayer, but in this case, the taxpayers are not giving more money to the schools. So, if the Indiana State High School Athletic Association has to absorb 300, 600 percent, 1,000 percent increases in costs, they do not have anywhere to pass it. The kids pay it. They will lose certain sports that are higher risk. They have computers reduced in the schools, books reduced in the schools. Sometimes even teachers, when they retire, are not replaced. And so we have class size increase because the taxpayers are not giving the schools more money.

So what happens when they increase their rates? Something has to give. What happens when a Little League or a Pop Warner league has a 300 percent or a 600 percent or 1,000 percent increase in their costs? Where do they get their money? They get it from the kids who are playing.

If one is a mom or dad and you are working on a tight budget and you wanted your kid to play Pee Wee Football or Little League and you want to have them go and you just saw a 300 percent or 600 percent or 1,000 percent increase in the cost of playing and you do not have much money, you are not going to let them play.

In many middle class families, I know in my family, we make the judgment, boy, we have got spring soccer, fall soccer, summer, winter, indoor, okay, you know, you start taking double, triple costs on these type of things, even middle- and upper-income families are going to restrict the amount.

At a time of rising obesity in this country, the last thing we need to do right now is shut down high school sports.

The plain truth of the matter is that some of the objections my good friend from Virginia raised, we have been trying to negotiate. We offered amendments. They said that they still would not support the bill. Then they came up with this last one on physical injury, because the bill does not even relate to other things other than physical injury. But we said, Okay, we will put them in, even though they are extraneous. If you are worried about them, we have protections about State laws. We have protection on civil rights laws, but if you want to put that in, we will put it in.

Then they went physical injury. What is a pitcher supposed to do in Little League? Unless you can throw it straight over the plate, you are not allowed to pitch or the umpire is going to be held liable. The coach is going to be held liable. The association is going to be held liable.

In football, when a linebacker's coming up, does he have to say, Excuse me, brace yourself, I am going to hit you at the knees, I am going to hit you in your back? In wrestling, are you supposed to say, before a take-down in the State rules, Uh-oh, I am going to go for a pin now, be ready? How does this actually work?

The way we have governing bodies is, they have to take into account the risk

to the individual plus the historic purpose of the sport. They have governing bodies that change these rules every year to try to make them safer, but you know what? Sports are not always safe. If we are going to have these ridiculous suits that go for millions of dollars, nobody's doing physical damages, hospital costs. This is for non-related to physical costs. If this is what we are going to do in our society, what we are going to have is silly sports or no sports, and everybody's going to be playing Frisbee unless the Frisbee hits somebody in the head, and then there will be a lawsuit off that, too.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SCOTT of Virginia asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. SCOTT of Virginia. Mr. Speaker, the gentleman has made all these statements that somebody can sue, somebody can sue, somebody can sue. What he has not related is anyone who has filed suit and actually recovered a judgment.

I would like to introduce for the RECORD at this point a letter from the Leadership Conference on Civil Rights which outlines several civil rights claims that would be barred by this legislation.

SEPTEMBER 13, 2004.

DEAR REPRESENTATIVE: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil rights coalition representing people of color, women, children, older Americans, persons with disabilities, gays and lesbians, major religious organizations, labor unions, and civil and human rights groups, we urge you to vote against H.R. 3369, the "Nonprofit Athletic Organization Protection Act of 2003." If enacted, this bill could set a dangerous precedent for the enforcement of civil rights laws generally and could specifically allow nonprofit athletic organizations to evade civil rights laws and unlawfully discriminate on the basis of race, sex, disability, or other characteristics protected by federal and/or state law.

While the preamble suggests that the bill's intent is to protect nonprofit athletic organizations from liability arising from claims of ordinary negligence relating to the adoption of rules for competitions/practices, the actual text of the bill is much broader and creates the risk that such organizations could evade their obligations under laws unrelated to negligence, such as federal and state civil rights laws. More specifically, the bill provides that "a nonprofit athletic organization [which includes the employees, agents, and volunteers of such organization] shall not be liable for harm caused by an act or omission of the . . . organization in the adoption of rules for sanction or approved athletic competitions or practices. . . . This language creates the risk of eliminating valid discrimination claims such as those found in the following cases:

In *Cureton v. NCAA*, a class action lawsuit filed by African-American student athletes challenged the National Collegiate Athletic Association's rule requiring all potential student-athletes to achieve a minimum score on the SAT or the ACT as having a disparate impact on African-American students, in

violation of Title VI of the Civil Rights Act of 1964. Early on, the Educational Testing Services (ETS), which designed the SAT, criticized the NCAA's then-proposed use of a fixed cut-off score and warned that such a rule would have such a disproportionate impact, and it did. But only in the face of a lawsuit did the NCAA change its rule so that student athletes could be eligible for Division I schools on the basis of their grades, not just their test scores.

In *Michigan High School Athletic Association v. Communities for Equity*, federal district and appellate courts in the Sixth Circuit have ruled that the state high school athletic association's practice of scheduling six girls' sports, and no boys' sports, in non-traditional and/or disadvantageous seasons discriminated against female athletes in violation of Title IX of the Education Amendments of 1972 and the U.S. Constitution. The court found that the association's scheduling decisions harmed girls by limiting their opportunities for athletic scholarships and collegiate recruitment, limiting their opportunities to play in club or Olympic development programs, and causing them to miss opportunities for awards and recognition.

In *PGA Tour, Inc. v. Martin*, the U.S. Supreme Court ruled that the Americans with Disabilities Act requires the PGA Tour to allow professional golfer Casey Martin, who suffers from a circulatory disorder making it painful to walk long distances, to ride in a golf cart between shots at Tour events. The nonprofit PGA had ruled that walking the course in an integral part of golf, and Martin would gain an unfair advantage using the cart. In a 7-2 decision, the Supreme Court decided that the PGA could not deny Martin equal access to its tours on the basis of his disability.

In addition, H.R. 3369 allows nonprofit athletic organizations to sue, but not be sued. It is the height of hypocrisy to suggest that these organizations should be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

Finally, the bill preempts state law that provides less liability protection to nonprofit athletic organizations but not state law that gives additional protection to nonprofit athletic organizations. There is no need for Congress to preempt state law at all. If states want to protect certain state athletic organizations, they can do so right now without any action by Congress.

While we understand that those who oppose this bill might be accused of fueling litigation, we urge you to consider the risk that this bill could be used to exempt nonprofit athletic organizations, which exercise control over the lives of student-athletes, coaches, and many others, from treating these individuals fairly and in accordance with our nation's civil rights laws. Moreover, this bill would create additional litigation regarding who is covered by the bill and what types of claims it precludes.

LCCR strongly urges you to oppose the "Nonprofit Athletic Organization Protection Act of 2003." If you have any questions, or would like additional information, please contact Nancy Zirkin at 202/263-2880, or Julie Fernandes, Senior Policy Analyst, at 202/263-2856.

Thank you in advance for your support.

Sincerely,

WADE HENDERSON,
Executive Director.
NANCY ZIRKIN,
Deputy Director.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Virginia (Mr. CANTOR).

Mr. CANTOR. Mr. Speaker, I thank the chairman for the time.

The increased cost of insuring youth athletic leagues is of great concern to me and the constituents of the Seventh Congressional District of Virginia. Millions of youngsters around the country participate in soccer, football, baseball, basketball, lacrosse and other sports. They learn discipline and teamwork, and most importantly, they have fun.

As a parent of three, I have spent countless hours on the football, soccer, lacrosse fields and other athletic facilities watching my children compete and grow from their athletic experience. It is something that I am very concerned about.

As has been said, we are now facing a very real prospect of a chilling of the desire for parents to form athletic associations to give their children an opportunity to compete on the athletic field. This bill takes on the prospects of this chilling.

It addresses the fact that there is increasing costs playing sports in a voluntary way, cost-prohibitive for American families. That is why I am here.

I thank the gentleman from Indiana for his sponsorship of this important legislation. I urge its passage and return to common sense so that we can see our children continue to play on the fields.

Mr. SCOTT of Virginia. 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, I thank the distinguished ranking member for the time, and I not only stand here as a mother of two who spent many countless hours in soccer and Little League and a variety of other sports, basketball and others, I agree with my colleagues who express their concern for the validity and support of these nonprofit athletic organizations.

But I also say that we are going at our concern in the wrong manner and wrong-headed way.

All of us enjoy the mementos and the various awards that our young people get in the playing of competitive voluntary sports as children, but the problem with this legislation, H.R. 3369, frankly, is that it does not differentiate between meritorious lawsuits and frivolous claims. It allows the organizations to sue but not to be sued and, thereby, I think, finds us in a very bad dilemma.

There are a number of suits involving civil rights, discrimination, disabled issues, disabled Americans that would not have gotten the attention if we had not allowed them to sue these various organizations.

In the *Cureton v. NCAA*, a class of African American student athletes challenged the National Collegiate Athletic Association's rule regarding national testing. They deserve their day in court.

The *PGA Tour, Inc., v. Martin* was a case dealing with the Americans with Disabilities Act which would suggest that the organization was antiquated in its understanding of the rights of disabled Americans.

Why would my colleagues deny these rights? And why would they deny the rights of Americans to provide themselves with some sort of relief?

I believe this legislation preempts State law unnecessarily. If States want to protect certain State athletic organizations, they can do so right now without any action by Congress. They can do so right now.

Unfortunately, H.R. 3369 does not just preempt State law. It preempts State law that gives more protections to athletes and leaves in place States that give additional liability protections to nonprofit athletic organizations.

I believe that this bill goes too far in the desire that we have, which is to make sure that we have a free or an open playing field, if you will, for our young people of America to develop their character skills, their leadership skills and their athletic ability.

Why are we interfering? I believe that we can look at the record and find a number of lawsuits did not generate into judgment, and so we understand that frivolous lawsuits are taken care of by the legal system, the judicial system that we put in place. Why are we putting our heavy hand to deny those parents and students and players on the field, those young people and others, the opportunity to engage when their rights have been deprived?

I would ask my colleagues to, one, appreciate the desire of my good friend the gentleman from Indiana (Mr. SOUDER) on this bill but recognize that laws are already in place to protect these nonprofit athletic organizations, and I ask them to reject this legislation at this time.

Mr. Speaker, I rise in opposition of this legislation, H.R. 3369, the "Nonprofit Athletic Organization Protection Act." This bill provides immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices. As a member of the House Judiciary Committee, many of my colleagues have reservations about the broad sweep of immunity that this bill will give to certain organizations and eliminate valid discrimination claims.

H.R. 3369 would provide immunity for any act or omission of a nonprofit athletic organization and its employees in the adoption of rules for sanctioned or approved athletic competitions or practices. This broad sweep of immunity would virtually eliminate valid discrimination claims such as those found in the following cases:

In *Cureton v. NCAA*, a class of African-American student-athletes challenged the National Collegiate Athletic Association's rule requiring all potential student-athletes to achieve a minimum score on the SAT or the ACT. Early on, the Educational Testing Services (ETS), which designed the SAT, criticized the NCAA's then-proposed use of a fixed cut-off

score and warned such a rule would have a disproportionate impact on African-American students. It did in fact have such an impact, but the NCAA did not change its rule. Only when this class brought a civil action did the NCAA change its rule so that student athletes could be eligible for Division I schools on the basis of their grades, not just their test scores.

In *PGA Tour, Inc. v. Martin*, the U.S. Supreme Court ruled that the Americans with Disabilities Act requires the PGA Tour to allow professional golfer Casey Martin, who suffers from a circulatory disorder making it painful to walk long distances, to ride in a golf cart between shots at Tour events. The nonprofit PGA had ruled that walking the course is an integral part of golf, and Martin would gain an unfair advantage using the cart. In a 7–2 decision, the Supreme Court decided that the PGA could not deny Martin equal access to its tours on the basis of his disability.

Moreover, in *Michigan High School Athletic Association v. Communities for Equity*, a Federal district court ruled that the State's high school athletic association practice of scheduling its female teams during nontraditional seasons discriminated against female athletes. The court found that scheduling the girls' sports, but not boys' sports, during nontraditional seasons resulted in limited opportunities for athletic scholarships and collegiate recruitment, limited opportunities to play in club or Olympic development programs, and missed opportunities for awards and recognition.

H.R. 3369 allows nonprofit athletic organizations to sue, but not be sued. It is the height of hypocrisy to suggest that these organization be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

There is no need for Congress to preempt State law. If States want to protect certain State athletic organizations, they can do so right now without any action by Congress. Unfortunately, H.R. 3369 doesn't just preempt State law. It preempts State law that gives more protections to athletes and leaves in places States that give additional liability protections to nonprofit athletic organizations.

I urge my colleagues to see this bill for what it really does, catering to special interests. Please join me in voting against H.R. 3369.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. OSBORNE).

Mr. OSBORNE. Mr. Speaker, I rise in support of H.R. 3369.

There is no question there has been a huge increase in personal injury lawsuits targeted at rulemaking bodies in recent years, such as Pop Warner, Little League, high school athletic associations and on and on.

Sports-governing authorities' premiums have risen, as has been stated previously, from about 120 percent to about 1,000 percent. At least one known carrier has completely dropped providing general liability coverage, while three others are looking at non-renewing all policies.

So this is a concern, and so the rulemaking bodies will be driven out of existence if they, number one, cannot afford the premium or, number two, if they just simply cannot get coverage. This would take roughly 7 million high school athletes right off the field, and

I think that the good that is done by college athletics and amateur sports far outweighs what we might see in terms of lawsuits.

The legal attack against all rulemaking bodies relies on the presumption that rules should eliminate all risk in athletic competition. In 1905, the NCAA was formed to eliminate the flying wedge. Recently, in football, a person cannot block with their head. They cannot chop block; clipping; practice in sweat clothes during the early season; water breaks; spring practice rules and so on. Yet if some young man decides to go out and tackle with his head down or has a spinal injury, there is absolutely no way we can prevent that. The rules have all been written, that I know of, that would provide safety in football. So accidents will happen.

So this rule, I think, is a good one because it would allow the rulemaking bodies to be protected from frivolous lawsuits by raising the standard of liability from negligence to gross negligence. And if we do not do something like this, a great number of young people will simply be taken off the field. I do not think that is a viable alternative.

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Mr. SCOTT of Virginia. Mr. Speaker, can you tell us how much time remains on both sides?

The SPEAKER pro tempore (Mr. OSE). The gentleman from Virginia (Mr. SCOTT) has 12½ minutes remaining, and the gentleman from Wisconsin (Mr. SENSENBRENNER) has 7½ minutes remaining.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, the Nonprofit Athletic Organization Protection Act before us today I believe sets a very dangerous civil rights precedent. I take this personally, because I raised four, now grown, children, and each and every one of them was an athlete, from competitive skater to All American football player, and I cannot imagine what our family would have been like if they had not been able to use their energy in sports. I cannot imagine the learning experience they would have missed if they had been faced with some unfair practice or decision that I could not challenge if that would have kept them out of athletics.

So I think what we are setting up here is the possibility of unfair practices and policies when I do not believe there is a need. This bill attempts to protect nonprofit athletic organizations from liability arising from claims of negligence, but I believe it could do more than that. What I believe it does is protect organizations from actual legitimate lawsuits.

What position does this put a parent in, when and if their daughter is told she cannot play soccer because she is not a boy? What does a parent do when

their handicapped child is told they cannot be on a golf team because they cannot walk the course, but they could certainly get around the course in a wheelchair?

While my children are now grown, they join me in wanting to have their children have every opportunity to play any sport. They know the value of their experience and they want all children, every child in this country, to have the same experiences that they had.

Mr. Speaker, this legislation will prevent athletes from fighting for their rights to play, and that is just plain wrong. I urge my colleagues to oppose H.R. 3369.

Mr. SENSENBRENNER. Mr. Speaker, I yield 30 seconds to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Speaker, the bill relates specifically to harm on the athletic field. We offered the Democrats this amendment, and they still opposed the bill.

Mr. Speaker, every single State high school athletic association supports this bill. So Members of Congress, if we have a recorded vote on this, need to know their high school association is already on record, including California, including Virginia, including Texas, every single State high school athletic association supports this bill.

Mr. Speaker, I will insert the list of these State associations into the RECORD.

NATIONAL FEDERATION OF STATE

HIGH SCHOOL ASSOCIATIONS,

Indianapolis, IN, September 10, 2004.

DEAR MEMBER OF CONGRESS: On behalf of the National Federation of State High School Associations (NFHS), I am writing to voice our strong support for the "Nonprofit Athletic Organization Protection Act of 2003", H.R. 3369, and urge you to vote for this legislation when it reaches the House floor. On September 8, the Judiciary Committee voted to support moving this bill forward and we understand it will reach the House floor soon.

The National Federation of State High School Associations, a non-profit organization that administers education-based athletic competitions, has been the target of liability claims alleging negligence due to the passage or adoption of rules for sanctioned or approved competitions. These allegations have resulted in an increase in the number of liability claims against this organization. The claims are beginning to have a detrimental financial impact on the NFHS and could affect our ability to continue to provide services to the nation's 20,000 high schools.

While these claims are believed to be without merit, the cost of defending claims and the uncertainty of judicial proceedings have caused significant financial challenges. It is possible we will need to reconsider providing such rules or guidelines in the future. This may also be true of other amateur sports rule makers. Without this legislation, we expect this will continue to deteriorate and will further jeopardize non-profit organizations that administer athletic competition and publish rules.

For education-based athletics to continue in America, nonprofit athletic organizations must have the ability to make rules without the constant threat of litigation.

Earlier this summer, the Federation adopted a resolution supporting H.R. 3369. A list of

each state association supporting this legislation is attached.

Sincerely,

ROBERT KANABY,
Executive Director.

STATE HIGH SCHOOL ATHLETIC ASSOCIATIONS
SUPPORTING H.R. 3369—THE NON PROFIT
ATHLETIC ASSOCIATION PROTECTION ACT

Alabama High School Athletic Association
Alaska School Activities Association
Arizona Interscholastic Association
Arkansas Activities Association
California Interscholastic Federation
Colorado High School Activities Association
Connecticut Interscholastic Athletic Conference
Delaware Secondary School Association
District of Columbia Interscholastic Athletic Association
Florida High School Activities Association
Georgia High School Association
Hawaii High School Athletic Association
Idaho High School Activities Association
Illinois High School Association
Indiana High School Athletic Association
Iowa High School Athletic Association
Kansas High Activities Association
Kentucky High School Athletic Association
Louisiana High School Athletic Association
Maine Principals' Association
Maryland Public Secondary Schools Athletic Association
Massachusetts Interscholastic Athletic Association
Michigan High School Athletic Association
Minnesota State High School League
Mississippi High School Activities Association
Missouri High School Activities Association
Montana High School Association
Nebraska School Activities Association
Nevada Interscholastic Activities Association
New Hampshire Interscholastic Athletic Association
New Jersey State Interscholastic Athletic Association
New Mexico Activities Association
New York State Public High School Athletic Association
North Carolina High School Athletic Association
North Dakota High School Activities Association
Ohio High School Athletic Association
Oklahoma Secondary School Activities Association
Oregon School Activities Association
Pennsylvania Interscholastic Athletic Association
Rhode Island Interscholastic League
South Carolina High School League
South Dakota High School Activities Association
Tennessee Secondary School Athletic Association
Texas University Interscholastic League
Utah High School Activities Association
Vermont Principals' Association
Virginia High School League
Washington Interscholastic Activities Association
West Virginia Secondary School Activities Commission
Wisconsin Interscholastic Athletic Association
Wyoming High School Activities Association

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume, and I would point out to the gentleman from Indiana that I would assume that anyone who has been immunized from liability would support the legislation. I would like to see a list of people who have been injured by negligence, victims of discrimination, vic-

tims of violations of labor law. Let us get some of those to see what they think about it.

Mr. Speaker, as I said, we have immunized the volunteers, so in terms of running the organization, the volunteers have been immunized. A lot of places do not have problems with insurance. This mandates there is a blanket for everybody, State, local, everybody else, whether there are insurance problems or not.

We hear so much from the other side about States rights. Well, here we are, whether there is a problem in the State or not, here we come with a Federal mandate changing all their tort laws. Whether or not you disagree or agree with the Americans for Disabilities Act, or whether you agree or disagree with civil rights laws or labor laws, people ought to have the right to bring these cases in appropriate circumstances. Otherwise, the agency has no responsibility in any of these areas.

Now, accidents happen. We are not talking about accidents. What we are talking about is when an organization violates good common sense and someone is injured as a direct result of negligence. Should there be a recourse? Who should be responsible for the damage? If there is insurance, if you can get insurance, then certainly you should not immunize everybody. This can be done on a State-by-State basis. If Indiana cannot get insurance, then maybe Indiana can deal with that the best way Indiana feels Indiana can deal with it. If Virginia wants to deal with it in a different way, they can deal with it in a different way based on the availability of insurance.

But, Mr. Speaker, this bill goes too far. It immunizes more than is needed and it immunizes more causes of action. Now, the gentleman has talked about what kinds of negotiations were going back and forth. That is true. But we are not talking about the negotiations, we are talking about what is in the bill. The fact is, because of what is in the bill discrimination cases are thrown out; because of the bill, labor disputes are thrown out; all kinds of Americans with disabilities and everything else are thrown out because of the legislation. It is clearly overbroad and should be defeated.

Mr. Speaker, I yield back the balance of my time.

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

With all due respect, Mr. Speaker, I believe the arguments advanced by the gentleman from Virginia are wrong. This bill defines a nonprofit athletic organization as one whose primary function is "the adoption of rules for sanctioned or approved athletic competitions and practices." And the bill only provides liability protection for an act or omission in the adoption of rules for such competitions and practices.

This language is very clear, and it should be interpreted only to deal with

on-the-field rules that govern such competitions and the injuries that arise from them. It does not cover civil rights cases alleging discrimination or other off-the-field harms.

Now, I am a little bit puzzled about these objections coming up at this late date. This bill went through the regular committee process. There was a full committee hearing on July 20 and a full committee markup on September 8. The bill was open for amendment at the markup, and had the gentleman from Virginia or anybody else on either side of the aisle been concerned about the aspect that has been complained about, they had the opportunity to offer an amendment and to have the amendment voted on. They chose not to do so.

I do not think that the amendment would have been necessary, because what this bill does is it says that if a State athletic association, like the Wisconsin Interscholastic Athletic Association, decides to adopt a rule for competition that means that everybody who competes in a sanctioned high school competition has to have a certain piece of equipment on, they cannot be sued merely for adopting that rule if the equipment failed. That is what the protection is all about.

Now, if this bill goes down, with the huge increases in insurance premiums that have been recounted by many of the Members here, one of two things is going to happen. One is that there will be an increase in premiums that are passed on to the schools involved, both public schools and private schools; or, alternatively, if there is no coverage that is available, then the State athletic association or the Little League governing bodies or the Pop Warner governing body will simply cease to exist and there will not be any rules that are adopted that are designed to protect athletes from injury to the greatest extent humanly possible.

This is a good bill. This is a narrow bill. It should be passed.

Mr. UDALL of Colorado. Mr. Speaker, I think this bill is well-intentioned but I must reluctantly oppose it because I think it goes further than it should and because the House will have no opportunity to consider amendments that would narrow its scope.

As it stands, the bill would not only prevent lawsuits related to personal injuries, but also evidently would apply to complaints that rules adopted by these organizations unfairly discriminate against women or otherwise violate civil rights protected by the constitution or by federal laws.

That this is a real possibility is made clear by the Judiciary Committee's report, which notes that "To further clarify that this legislation only applies to a limited category of claims that arise out of activities on the field in sanctioned athletic competitions, an amendment may be added to this legislation before House floor action to further clarify that the liability relief is not intended to apply to civil rights and discrimination cases that challenge eligibility rules set by such organizations."

Unfortunately, no such clarifying change was included—and now the bill is being considered under a procedure that prevents the House from considering any amendment.

I also am concerned that the bill as it stands might also inadvertently protect individuals who could potentially harm children. During the Judiciary Committee markup, Representative LOFGREN remarked that if a poor hiring rule was in place that did not screen out pedophiles, parents would be barred from suing the athletic association regarding that rule. Here again I think it would have been better for the House to be able to at least consider an amendment to address this point.

Because of these problems, and because the only choice before us is to approve or disapprove the bill as it stands, I will vote against this measure in the hope that it can be reconsidered under a procedure that permits more extensive debate and consideration of amendments.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 3369.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

GOOD SAMARITAN VOLUNTEER FIREFIGHTER ASSISTANCE ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1787) to remove civil liability barriers that discourage the donation of fire equipment to volunteer fire companies, as amended.

The Clerk read as follows:

H.R. 1787

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 "Good Samaritan Volunteer Firefighter Assistance Act of 2004".

SEC. 2. REMOVAL OF CIVIL LIABILITY BARRIERS THAT DISCOURAGE THE DONATION OF FIRE EQUIPMENT TO VOLUNTEER FIRE COMPANIES.

(a) **LIABILITY PROTECTION.**—*A person who donates fire control or fire rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death proximately caused by the equipment after the donation.*

(b) **EXCEPTIONS.**—*Subsection (a) does not apply to a person if—*

(1) *the person's act or omission proximately causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct; or*

(2) *the person is the manufacturer of the fire control or fire rescue equipment.*

(c) **PREEMPTION.**—*This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that notwithstanding subsection (b) this Act shall not preempt any State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.*

(d) **DEFINITIONS.**—*In this section:*

(1) **PERSON.**—*The term "person" includes any governmental or other entity.*

(2) **FIRE CONTROL OR RESCUE EQUIPMENT.**—*The term "fire control or fire rescue equipment" includes any fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.*

(3) **STATE.**—*The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any other territory or possession of the United States, and any political subdivision of any such State, territory, or possession.*

(4) **VOLUNTEER FIRE COMPANY.**—*The term "volunteer fire company" means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation compared with an entry level full-time paid individual in that association or in the nearest such association with an entry level full-time paid individual.*

(e) **EFFECTIVE DATE.**—*This Act applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (a), is donated on or after the date that is 30 days after the date of the enactment of this Act.*

SEC. 3. STATE-BY-STATE REVIEW OF DONATION OF FIREFIGHTER EQUIPMENT.

(a) **IN GENERAL.**—*The Attorney General of the United States shall conduct a State-by-State review of the donation of firefighter equipment to volunteer firefighter companies during the 5-year period ending on the date of the enactment of this Act.*

(b) **REPORT.**—*Not later than 6 months after the date of the enactment of this Act, the Attorney General of the United States shall publish and submit to the Congress a report on the results of the review conducted under subsection (a). The report shall include, for each State, the most effective way to fund firefighter companies, whether first responder funding is sufficient to respond to the Nation's needs, and the best method to ensure that the equipment donated to volunteer firefighter companies is in usable condition.*

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

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 in which to revise and extend their remarks and include extraneous material on H.R. 1787, the bill now 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 such time as I may consume. I rise today to urge my colleagues to vote for H.R. 1787, the Good Samaritan Volunteer Firefighter Assistance Act of 2004. I would like to

thank the sponsor of the bill, the gentleman from Delaware (Mr. CASTLE), for bringing attention to an important issue.

This straightforward, narrowly tailored legislation deserves our support, as do the volunteer firefighters who stand to benefit from its passage. The purpose of the bill is simple and clear: To encourage increased donation of surplus firefighting equipment to volunteer firefighting units by removing civil liability barriers that currently cause some corporation, individuals, and professional firefighting entities that destroy or mothball surplus or used equipment rather than to donate it.

The Committee on the Judiciary had a hearing on H.R. 1787 on July 20, 2004, at which Chief Philip Stittleburg of the National Volunteer Fire Council testified in favor of the bill. According to the testimony received by the committee, volunteer fire departments account for 75 percent of all the Nation's firefighters and represent a cost savings estimated to be as much as \$37 billion annually, which taxpayers would otherwise have to spend if those services that volunteers provide had to be replaced with full-time paid professional firefighters.

Many of these volunteer departments are in rural areas, with fewer resources, and face a constant struggle to provide their members with adequate equipment to protect local communities. Volunteer fire departments have traditionally benefited from the donation of surplus or used equipment when professional fire departments or firefighting units of private enterprises upgrade or replace their own equipment. Surplus equipment may include hoses, oxygen masks, protective clothing or even fire trucks. However, today, some of this needed, usable, and safe equipment is being destroyed or put in storage by the better-equipped fire units instead of being donated to the volunteer departments.

Many times donations never occur because of the fear of legal liability exposure if such equipment were ever to fail, even through no fault of the donor. The legislation before us would remove both the fear and reality of such liability for potential donors of fire safety or fire rescue equipment to volunteer departments.

The bill before us is a good, common-sense idea, but not an entirely original one. Ten States have already passed versions of this legislation at the State level. Texas, most notably, passed a law 7 years ago granting liability relief to donors of firefighting equipment that have resulted in approximately \$13 million worth of donations to over a thousand volunteer departments since 1997. However, volunteer firefighter advocates do not have the resources to wage legislative campaigns in the remaining 40 States.

At a time when the Federal Government is more involved than ever in funding local first responders, Congress

has the responsibility to do whatever it can to help volunteer firefighters get better equipment at zero taxpayer cost. What the bill does is simply provide that a person or entity who donates fire control or rescue equipment to a volunteer department will not be liable for civil damages for damage or loss proximately caused by the equipment after donation.

Despite some allegations by trial lawyers and other opponents, what the bill does not do is to protect the manufacturer of such equipment. It does not protect any donor whose actual mission constitutes gross negligence or intentional misconduct. Furthermore, the bill does not endanger the safety of firefighters. As Chief Stittleburg testified at the committee's hearing, fire chiefs are responsible for inspecting donated and purchased equipment alike, and no chief would allow their firefighters to answer an alarm using equipment that was not properly inspected and deemed fit for use.

Given a choice between no equipment and donated equipment that they inspect before using, volunteer fire departments are clearly in favor of the latter. And given a choice between believing trial lawyers versus volunteer firefighters about the need for use and safety of donated equipment, I will choose the latter.

□ 1130

Mr. Speaker, today we have an opportunity to provide some limited, commonsense relief to Good Samaritan donors of needed equipment to Members' own local fire departments and to the communities that rely upon volunteer firefighters. I urge my colleagues to join me in supporting H.R. 1787.

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

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I oppose this legislation. While I salute the hard work of our volunteer firefighters, it appears to me we have before us a very extreme solution to a problem that does not exist. Although H.R. 1787 is supposed to encourage donation of firefighting equipment by eliminating civil liability barriers, there are no reported cases of businesses refusing to donate equipment, nor cases of volunteer firefighting companies suing their donors. The so-called problem could be solved without congressional action.

First, we heard during our committee deliberations that a volunteer fire department could simply sign a contract waiving liability of the donors from negligence resulted from the donated firefighting equipment. This tactic would ensure that fire companies are informed and have consented to the immunity of the donor. We do not have to mandate the immunity. They can agree to it if they want or if the donor insists.

Furthermore, Mr. Speaker, this is not a Federal issue. It is a matter that

can be dealt with by the States. There is nothing Federal about local volunteer fire departments. This liability issue is a State issue, and the gentleman from Wisconsin (Mr. SENSENBRENNER) has pointed out that many States have already dealt with the issue on a State basis. Companies should not be given blanket immunity for donating fire equipment. While it may be true that most of the equipment is perfectly usable, companies should be prevented from donating obsolete equipment known to be of dubious safety. Certain equipment, like protective gear and breathing apparatus, can deteriorate over time and may not be suitable for reuse.

With all of the other pertinent issues we have before Congress, I find it problematic that we are focusing our attention and problems on something that is frankly not a problem. I urge my colleagues to reject this bill which may in fact endanger firefighters.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Delaware (Mr. CASTLE), the author of the bill.

Mr. CASTLE. Mr. Speaker, I thank the gentleman for yielding. I rise in support of the legislation which I introduced, the Good Samaritan Volunteer Firefighter Assistance Act, and I find it stunning that anyone would oppose this legislation. It just never occurred to me that could happen.

The legislation removes a barrier which currently prevents some organizations from donating surplus firefighting equipment to fire departments in need. Under current law, the threat of civil liability has caused some organizations to destroy fire equipment rather than donating it to volunteer rural and other financially strapped departments.

We know that every day across the United States, firefighters respond to calls for help. We are grateful that these brave men and women work to save our lives and protect our homes and businesses. We may presume that firefighters work in departments with the latest and best firefighting and protective equipment when in reality there are an estimated 30,000 firefighters who risk their lives daily due to a lack of basic personal protective equipment.

In both rural and urban fire departments, limited budgets make it difficult to purchase more than fuel and minimum maintenance. There is rarely enough money to buy new equipment. At the same time, certain industries are constantly improving and updating their fire protection equipment to take advantage of new state-of-the-art innovation. Sometimes the surplus equipment has never been used to put out a single fire. Sadly, the threat of civil liability causes many organizations to destroy, rather than donate, millions of dollars of quality fire equipment.

Not only do volunteer fire departments provide an indispensable service,

some estimates indicate that the nearly 800,000 volunteer firefighters nationwide save State and local governments \$36.8 billion a year. Of the 26,000 fire departments in the United States, more than 19,000 are all volunteers and another 3,800 are mostly volunteer. While volunteering to fight fires, these same selfless individuals are asked to raise funds to pay for new equipment. Bake sales, potluck dinners, and raffles consume valuable time that could be better spent training to respond to emergencies. All this, while surplus equipment is being destroyed.

In States that have removed liability barriers, such as Texas, fire companies have received millions of dollars in quality firefighting equipment. In the 7 years of the Texas program, more than \$12 million worth of firefighter equipment has been donated and given to needy departments. This includes nearly 70 emergency vehicles and more than 1,500 pieces of communications equipment. In total more than 33,000 items have been donated.

The generosity and goodwill of private entities donating surplus fire equipment to volunteer fire companies are well received by the firefighters and the communities. The donated fire equipment will undergo a safety inspection by the fire company to make sure firefighters and the public are safe.

We can help solve this problem. Congress can respond to the needs of fire companies by removing civil liability barriers. This bill accomplishes this by raising the current liability standard.

Mr. Speaker, I hope all of my colleagues will join me in supporting this bipartisan legislation to better equip our Nation's firefighters.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as I understand it, the threat of civil liability causes some to think twice about donating dangerous equipment, equipment which may place our firefighters in danger. If this bill passes, they will not have to be concerned about donating dangerous equipment. I am not sure that is a good thing. I would hope that we would defeat the bill, allow the volunteer firefighters to waive liability if they see fit, but not impose this mandated waiver on everybody whether they want it or not.

Mr. Speaker, I yield back the balance of my time.

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

Mr. Speaker, I think the choice in this bill is either pass the bill and allow for the donation of the equipment, or do not pass the bill and no equipment is going to be donated at all because the donor does not want to be on the hook for a civil liability lawsuit merely as a result of the donation.

This bill does not immunize the manufacturer of the equipment so if the equipment was defectively manufactured, a lawsuit would still lie against

that manufacturer for either product liability or negligence.

The gentleman from Virginia (Mr. SCOTT) also says, well, the way to deal with this is to defeat the bill and have every volunteer fire company sign a waiver when they receive donated equipment. Well, that means that there is going to have to be a lawyer sitting in the firehouse drafting these waiver documents. Most of the volunteer fire companies that I am familiar with in my State, and I do not think they are any different from volunteer fire companies in other States, are staffed entirely by volunteers. These are people who donate their time to deal with emergency situations. Many of the volunteer fire companies in Wisconsin also run the first responder and emergency medical technician teams, and they ought to be spending their time and efforts doing training and raising money to purchase equipment that could not be donated, rather than paying for lawyers' fees to draft up waiver of liability agreements.

I think this is a very sound bill. It is a commonsense bill. It should be passed.

Mr. Speaker, I yield such time as he may consume to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Speaker, I thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for yielding me this time.

I really find it amazing that anyone would come to the floor and vote against this legislation. There are nine States which have this in place at this time, and they are large States. I mentioned Texas, but there are also other large States such as Florida and California.

This is clearly something which has worked in these States. They have received contributions of communications and firefighting equipment. In most instances, it is far better equipment than what they have already. In every single case, the fire companies inspect the equipment to make sure it is safe, contrary to what the gentleman from Virginia (Mr. SCOTT) has stated regarding the safety aspects. In the research I have done, it has proven to be extremely safe.

But a lot of companies, frankly, in other States, corporations, absolutely refuse to make donations because they are worried about liability. We are simply trying to clear the way to do that. What is in the best public interest, to worry that somebody does not inspect the equipment properly, that is just not very likely to happen, or saving people's lives in firefighting, which is really what this legislation is all about.

There is no doubt the scale on this one is overwhelming in terms of doing something such as this. This protects the donor only, not the manufacturer. No one is donating dangerous equipment in this particular circumstance. There is no reason whatsoever not to support this legislation, not to support

the volunteer firefighters, not to support the public who will benefit from this, not to support the use of the equipment rather than destroying the equipment because of concern about litigation and concerns such as those.

Mr. Speaker, for all these reasons, I hope when the time comes there is only one vote against this, and that is the gentleman from Virginia, and all other Members are aware of the benefits and what this legislation does.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of this legislation, H.R. 1787, the Good Samaritan Volunteer Firefighter Assistance Act of 2003, but will express the reservations that I had during the Judiciary Committee oversight and markup hearings. The purpose of this legislation—purportedly, is to ensure that an individual or entity that donates fire control or fire rescue equipment to a volunteer fire company is not held liable for State or Federal civil damages for personal injuries, property damage or loss, or death caused by the equipment after the donation.

On its face, this legislation has beneficial purpose, that is, to encourage large companies that own new or virtually new equipment to donate it to rural area fire companies or those that lack resources. This purpose is definitely consistent with America's need to support its first responders as terror threats continue to loom and cause continual rise in threat level.

However, records—or the lack of record shows that there is currently no need for this legislation. There have been no reported cases of volunteer firefighting companies bringing suit to recover from damages caused by defective equipment. Moreover, we have no record of numbers of companies that have refused to donate their used or new fire equipment to volunteer fire companies.

This legislation preempts State law in terms of shielding donors of equipment from liability. We in Congress have a duty to uphold the Constitution, and given the lack of immediate need, it seems "frivolous" to contravene the 10th amendment and erode the rights of the individual States to handle matters relating to their local fire companies.

In Texas, this issue is already legislatively addressed in 1997, as it is in the States of Alabama, Arizona, Arkansas, California, Florida, Illinois, Indiana, Missouri, and South Carolina. Therefore, if we refrain from taking this unnecessary congressional action, other States will follow suit and pass similar measures to achieve positive results.

Therefore, I would have offered two amendments. I would have offered an amendment that would limit this legislation to situations where the donee has not executed a waiver of liability.

The text of the first amendment read "if the volunteer fire company waives all liability claims against the donor with respect to that equipment."

This amendment would have appropriately narrowed the scope of this legislation by specifying that a donor of fire equipment will be exempt from liability only if the donee fire company has executed a waiver of liability. Moreover, by adding this provision, "frivolous lawsuits" would be prevented with minimal congressional action and with minimal effects on the 10th amendment to the Constitution.

Additionally, this amendment would have protected both the donor and the donee by re-

quiring a legal showing that there was acceptance as to the quality of the equipment donated in any given circumstance.

I also planned to offer an amendment that called for the State-by-State review of the amount of equipment donated to volunteer firefighter companies for 5 years after enactment of H.R. 1787. This provision would have shown the public the results of this legislation in order to reveal its effectiveness or the lack thereof. The second part of this amendment would have required the Attorney General to submit a report to Congress of the results of the State-by-State review.

The Jackson-Lee "State review" amendment would have allowed Congress to clearly analyze how our first responders benefit from this legislation against the effects it will have on the execution of State law. If the legislation fails to serve its purported purpose, the study would have clearly revealed it to Congress so that corrective measures may be taken.

The two amendments above would have helped to narrow the scope of this vague legislation as well as to even the scale for the donee firefighting corporation as well as the donor. It is critical that we protect and preserve the rights of the individual States as well, consistent with the 10th amendment to the U.S. Constitution.

Nevertheless, I ask that my colleagues support this legislation recognizing the points that I have made above.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. OSE). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1787, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

VOLUNTEER PILOT ORGANIZATION PROTECTION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1084) to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations, as amended.

The Clerk read as follows:

H.R. 1084

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 "Volunteer Pilot Organization Protection Act of 2004".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—*Congress finds the following:*

(1) *Scores of public benefit nonprofit volunteer pilot organizations provide valuable services to communities and individuals.*

(2) In calendar year 2001, nonprofit volunteer pilot organizations provided long-distance, no-cost transportation for over 30,000 people in times of special need.

(3) Such organizations are no longer able to reasonably purchase non-owned aircraft liability insurance to provide liability protection, and thus face a highly detrimental liability risk.

(4) Such organizations have supported the interests of homeland security by providing volunteer pilot services at times of national emergency.

(b) **PURPOSE.**—The purpose of this Act is to promote the activities of nonprofit volunteer pilot organizations flying for public benefit and to sustain the availability of the services that such organizations provide, including transportation at no cost to financially needy medical patients for medical treatment, evaluation, and diagnosis, as well as other flights of compassion and flights for humanitarian and charitable purposes.

SEC. 3. LIABILITY PROTECTION FOR NONPROFIT VOLUNTEER PILOT ORGANIZATIONS FLYING FOR PUBLIC BENEFIT AND TO PILOTS AND STAFF OF SUCH ORGANIZATIONS.

Section 4 of the Volunteer Protection Act of 1997 (42 U.S.C. 14503) is amended—

- (1) in subsection (a)(4)—
 (A) by redesignating subparagraphs (A) and (B) as (i) and (ii), respectively;
 (B) by inserting “(A)” after “(4)”;
 (C) by striking the period at the end and inserting “; or” and
 (D) by adding at the end the following:
 “(B) the harm was caused by a volunteer of a nonprofit volunteer pilot organization that flies for public benefit, while the volunteer was flying in furtherance of the purpose of the organization and was operating an aircraft for which the volunteer was properly licensed and insured.”; and

- (2) in subsection (c)—
 (A) by inserting “(1)” before “Nothing”; and
 (B) by adding at the end the following new paragraph:

“(2) Notwithstanding paragraph (1), a nonprofit volunteer pilot organization that flies for public benefit, and the staff, mission coordinators, officers, and directors (whether volunteer or otherwise) of such organization or a referring agency of such organization, shall not be liable with respect to harm caused to any person by a volunteer of such organization, while the volunteer is flying in furtherance of the purpose of the organization and is operating an aircraft for which the volunteer is properly licensed and has certified to such organization that such volunteer has in force insurance for operating such aircraft.”.

SEC. 4. REPORT BY ATTORNEY GENERAL.

(a) **STUDY REQUIRED.**—The Attorney General shall carry out a study on the availability of insurance to nonprofit volunteer pilot organizations that fly for public benefit. In carrying out the study, the Attorney General shall make findings with respect to—

- (1) whether nonprofit volunteer pilot organizations are able to obtain insurance;
 (2) if no, then why;
 (3) if yes, then on what terms such insurance is offered; and
 (4) if the inability of nonprofit volunteer pilot organizations to obtain insurance has any impact on the associations’ ability to operate.

(b) **REPORT.**—After completing the study, the Attorney General shall submit to Congress a report on the results of the study. The report shall include the findings of the study and any conclusions and recommendations that the Attorney General considers appropriate.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

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. 1084, 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 such time as I may consume.

Mr. Speaker, I rise today to urge my colleagues to support H.R. 1084, the Volunteer Pilot Organization Protection Act of 2004. I would like to thank the bill’s sponsors, the gentleman from Virginia (Mr. SCHROCK), and also the other gentleman from Virginia (Mr. FORBES), for their work in bringing this legislation before us.

The bill provides limited liability relief for volunteer pilot and volunteer pilot organizations that do some of the most invaluable and unappreciated volunteer work in the Nation. The legislation is intended to promote the publicly beneficial activities of volunteer pilot organizations and their employees and members by exempting them from liability when flying volunteer missions in furtherance of the purpose of such organizations.

Volunteer pilot organizations and the pilots who fly for them are involved in a range of activities constituting what generally may be called public benefit aviation. The activities of public benefit aviation include environmental observation, wilderness rescue, delivery of medical supplies and organs, and transporting medical patients. In the area of medical patient transport alone, volunteer pilot organizations provided long-distance transportation for free to over 40,000 patients and their escorts in 2003.

Since the activities of volunteer pilot organizations are not protected from liability by the Volunteer Protection Act, they are exposed to significant liability risks leading many insurers to drop coverage for those pilots and organizations. In addition, hospitals and other medical establishments are leery of referring patients to volunteer pilot medical transport services because of their own fear of liability exposure based upon the simple act of recommendation.

The legislation limits liability exposure for volunteer pilots and organizations by bringing them within the scope of coverage of the Volunteer Protection Act. This legislation will not confer blanket immunity. Liability will still attach for gross negligence or reckless misconduct. The bill would also have an added benefit of allowing hospitals, clinics, and other organizations to refer needy patients for no-cost medical transport with less fear of their own liability exposure.

The bill is supported by a wide array of charitable organizations, including the National Association of Hospital Hospitality Houses, the Children’s Organ Transplant Association, the Health and Medical Research Charities of America, the National Organization For Rare Disorders, the National Foundations For Transplant, the Independent Charities of America, the Air Care Alliance, and others.

Mr. Speaker, H.R. 1084 will end the cycle of litigation that has stifled the efforts of the brave and public-minded volunteer pilots who risk their own lives by flying patients so the patients they serve might have a chance to live. I urge support of the legislation.

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

□ 1145

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, unlike many of the others, this bill is narrowly drawn, and it is my understanding, and my colleague from Virginia, I think, can correct me if I am wrong, but the usual problem we have in this case is you have an injured party without any recourse at all.

This bill requires insurance on the part of the pilot. And so if there is negligence, the injured party does have recourse. He has recourse against the insurance policy, but he does not have recourse, in the bill, to the organization, the volunteer organization that just matched the pilot and the injured party together, so that the party, injured through ordinary negligence, would have recourse against the insurance policy covering the airplane and the pilot.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from Virginia (Mr. FORBES), one of the authors of the bill.

Mr. FORBES. Mr. Speaker, several days before Christmas, the phone rang at Angel Flight, and the voice on the other end of the line said she only had 4 weeks to live. Her only hope was receiving an experimental drug treatment in San Antonio, but with a mountain of medical bills, she could not afford the flight.

A few minutes later, an urgent e-mail would go out. Responses would come back in, and within a few hours, a pilot would be located. The patient would be flown to San Antonio for treatment. And upon arrival, a car would be waiting to drive her to the hospital. She would never see a bill for any of her transportation.

Angel Flight is a nonprofit organization that offers free, long-distance transportation for medical care and removes the financial burden from patients. Its volunteer pilots are stockbrokers, realtors, private businessmen, retired Air Force pilots, commercial pilots, lawyers and doctors and others.

Every year, on their free time, these pilots fly over 10,000 patients nationwide. Some pilots fly one or two mercy flights a year. Others may fly as many as 50 flights. All are flown at the pilot's expense.

Angel Flight is just one organization involved in nonprofit public-benefit flying. Last year, volunteer pilot organizations provided long-distance, no-cost transportation for over 40,000 patients and their escorts in times of special need. Other organizations flew missions ranging from environmental observation to organ transportation. Following the terrorist attacks of September 11, significant quantities of blood and blood products were transported by volunteer pilots.

In the last several years, however, in part due to the fear of litigation, yearly insurance once available for \$1,000 has skyrocketed to more than \$25,000 a year even though there was no evidence presented to the Judiciary Committee of any negligence committed by any of these pilots or their organizations. Not only are talented volunteers afraid of flying mercy flights for fear of being sued, most of the organization's nonflying staff cannot afford liability protection.

Mr. Speaker, today, we consider legislation to address this serious problem sponsored by my colleague from Virginia (Mr. SCHROCK). H.R. 1084 will create specific liability protection for nonprofit volunteer pilot organizations flying for the public's benefit. It will ensure that, when these pilots take to the skies, the only thing on their mind is getting that patient to the treatment they need. And ultimately, it will encourage others to join them in this network of charity.

Without H.R. 1084, the Volunteer Pilot Organization Protection Act, we risk that these charitable organizations will no longer be able to provide their important services, and tens of thousands of people who benefit from their work will be unable to obtain the medical care they desperately need.

Equally important, without this and other vital legislation aimed at curbing lawsuit abuse, we risk the possibility that America's abundant tradition of generosity and charity will be undermined by a few who use the judicial system for the wrong purposes. I urge my colleagues to vote in favor of H.R. 1084 to keep these committed volunteers in our skies and keep America's spirit of generosity flying high.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 6 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise to add my support to this legislation.

I had concerns about it, because I am always concerned when we have a dilemma between helping and providing good things and good activities juxtaposed, if you will, or conflicted with the idea of closing out rights of the injured.

But in any event, I believe that the ultimate goal of this legislation is to

enhance the needed services to communities in need, and therefore, I think it is important to promote the activities of our nonprofit pilot organizations as we should protect all of our nonprofit organizations as we can in balance with the need to be able to address our grievances.

I think it is important to make note of a valuable point made by the distinguished ranking member of the Subcommittee on Crime, and that is that this legislation does have and provide for coverage and insurance by these pilots. In Texas, for example, the Angel Flight South Central was established in 1991 as Angel Flight of Texas, a nonprofit corporation. Its pilots use their flying skills to provide transportation to medical treatment for seriously ill or injured people who are geographically isolated or are in financial need.

This organization serves institutions such as the M.D. Anderson Cancer Center located in Houston, Texas, and the University of Texas Health Medical Branch of Galveston in Galveston, Texas, among many others. Therefore, I would want to make all efforts to support organizations such as Angel Flight. However, we must carefully weigh the benefits of selfless acts of others with the need to craft narrowly tailored legislation that protects all parties equally.

H.R. 1084 as drafted requires serious analysis and amendment by this committee. Section 3 as drafted departs from the 1997 Volunteer Protection Act by shielding not only the volunteer pilot from liability but also the staff, mission coordinator, officer or director of the nonprofit organization.

This expansion of protection, as I indicated in my earlier remarks, seems a little bit too broad. An injured party has a right to bring a claim for recovery of damages against some principal of the nonprofit organization or responsible party. And the courts, I believe, should retain discretion as to whether it will hear the matter. I would hope, as this legislation moves through the Congress, through the Senate and ultimately, finally passed, that we will have the opportunity to look at this again.

Congress should legislate when necessary, especially in areas of the law that affect an individual's right to sue for damages. To date, there has been no reported civil liability case filed against a volunteer pilot or against a volunteer pilot organization. Furthermore, 43 States, which include Texas, have passed legislation that deals with volunteer liability. Therefore, this committee and this body, as this legislation moves, should again make sure that all of these matters are taken care of.

I would hope that, also, the issues dealing with the liability would be considered. I had concerns and had amendments in committee that would have narrowed the scope of the liability protection given to volunteers of nonprofit pilot organizations to cover persons

within the aircraft only. The rights of the bystander who is not inside the aircraft and who might be injured through the negligence of the pilot should be preserved given that no compelling justification has been given to include those outside the aircraft. I hope, maybe, in the final writing of this bill that that matter were handled and, if not, that it will be taken care of as it moves, as I said, through the Congress.

Mr. Speaker, in addition, the appropriate scope of this legislation should be the volunteer injured person, for policy reasons. One of the purported purposes of this legislation was to encourage continued service to individuals in rural areas who do not have the financial means to receive this service otherwise. The proposed language that I spoke about earlier of the concept of bystander would still again provide more clarified aspects to this legislation.

It is important as well to make sure that we cover issues dealing with terrorism and misuse of airplanes. Again, I hope that these issues may be ironed out because they are important points that were raised.

Overall, however, as I started, knowing that Angel Flight of Texas, Incorporated, as one of many nonprofit volunteer pilots organizations around the Nation, needs our concern about them being able to provide life and safety to those who are seeking medical care and other needs, I think this legislation on its face is important and deserves our support.

Mr. Speaker, I add my support to this legislation and would hope that, as it makes its way to its final signing, that it will have all these issues that we have spoken of and raised concerns about taken care of so that the legislation can serve our communities and our Nation.

Mr. Speaker, I rise in support of the bill before the House, H.R. 1084, the Volunteer Pilot Organization Protection Act, although I had reservations about certain of its provisions during Committee consideration. It is important that we promote the activities of our nonprofit pilot organizations—as we should protect all of our nonprofit organizations as a whole, especially when they provide a service that facilitates the protection of our homeland at a time like now when our vulnerabilities are at a high level.

In Texas, Angel Flight South Central was established in 1991 as Angel Flight of Texas, Inc., a 501(c)(3) non-profit corporation. Its pilots use their flying skills to provide transportation to medical treatment for seriously ill or injured people who are geographically isolated or are in financial need. This organization serves institutions such as the M.D. Anderson Cancer Center, located in Houston, Texas and the University of Texas Health Medical Branch of Galveston in Galveston, Texas, among many others. Therefore, I would want to make all efforts to support organizations such as Angel Flight.

However, we must carefully weigh the benefits of selfless acts of others with the need to craft narrowly tailored legislation that protects

all parties equally. H.R. 1084, as drafted, requires serious analysis and amendment by this committee.

Section 3, as drafted, departs from the 1997 Volunteer Protection Act by shielding not only the volunteer pilot from liability but also the staff, mission coordinator, officer, or director of the nonprofit organization. This expansion of protection is far too broad to justify the proposed benefits it intends to confer. An injured party has a right to bring a claim for recovery of damages against some principal of the nonprofit organization or responsible party, and the Courts should retain discretion as to whether it will hear the matter.

Congress should legislate when necessary, especially in areas of the law that affect individuals' right to sue for damages. To date, there has been no reported civil liability case filed against a volunteer pilot or against a volunteer pilot organization. Furthermore, 43 states, which include Texas, have passed legislation that deals with volunteer liability. Therefore, this Committee has no immediate need to consider this legislation and can better spend its time working on legislation to implement the recommendations of the 9/11 Commission or other similar legislative agendas.

Therefore, I would have offered two amendments. I would have offered an amendment that would have narrowed the scope of the liability protection given to volunteers of nonprofit pilot organizations to cover persons within the aircraft only. The rights of the bystander who is not inside the aircraft and who might be injured through the negligence of the pilot should be preserved given that no compelling justification has been given to include those outside the aircraft, from relief.

In addition, the appropriate scope of this legislation should be the volunteer-injured person for policy reasons. One of the purported purposes of this legislation is to encourage continued service to individuals in rural areas or who do not have the financial means to receive this service otherwise.

The proposed language of my "bystander" amendment would have clarified and narrowed the scope of this legislation.

I also planned to offer an amendment that would prevent perpetrators of hate crimes in the last 5 years (as defined in the Hate Crime Statistics Act) from receiving the benefits of this legislation. This Act defines "hate crimes" as those which "manifest prejudice based on race, religion, sexual orientation, disability or ethnicity."

In 1991, the FBI documented a total of 4,558 hate crimes, reported from nearly 2,800 police departments in 32 states. The FBI's most recent HCSA report, for 1996, documented 8,759 hate crimes reported to the FBI by 11,355 agencies across the country.

Because the incidence of hate crimes is so large and an aircraft has been demonstrated to be a highly effective instrumentality of terrorist offenses, no one convicted of a hate crime should be allowed to benefit under this legislation or a pilot.

While I have reservations about certain provisions of this proposal, I recognize the benefits that it can bring to injured parties. Therefore, I ask that my colleagues support this legislation.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

This bill is narrowly drawn and is different from the other bills because vic-

tims of negligence will have recourse. It is similar to Good Samaritan State laws that immunize volunteers but fails to immunize them from automobile accidents because there is an expectation that the automobile will have insurance. So victims of the negligence will have recourse.

This bill requires insurance so victims, either on the plane or on the ground, will have recourse against the insurance policy but not against the volunteer organization. That is an appropriate balance, and I support the legislation.

Mr. Speaker, I yield back the balance of my time.

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

Mr. Speaker, I think we should make it very clear that this bill is narrowly drawn. There is liability to the volunteer pilot for willful or criminal misconduct, gross negligence, reckless misconduct or conscious flagrant indifference to the rights and safety of the individual that is harmed by the volunteer. Anything that rises above ordinary negligence, there is no immunity involved.

I guess I would be remiss if I did not express my concern that there have been allegations that passing this bill will increase the risk of terrorism. The volunteer pilots who fly these important missions are carefully screened professionals. They undergo background checks that are above and beyond those that are required for licensure as a pilot, and many of the pilots who do volunteer their services are commercial pilots when they are being paid. I think that the checks that a terrorist could slip through are so severe that the chances of that happening really do not exist at all.

I take great umbrage at the notion that the passage of this bill, which provides a limited immunity from liability, opens the door, even a crack, to increased risk of terrorism in the airways. I would hope that the House would reject this notion by passing this bill overwhelmingly.

Mr. CONYERS. Mr. Speaker, I cannot support H.R. 1084, the "Volunteer Pilot Organization Protection Act" for the following reasons: First, it undoes the balance achieved in the Volunteer Protection Act by specifically exempting pilots and aircraft carriers from liability; second, it not only applies to pilots, but also to staff, mission coordinators, officers and directors of volunteer pilot organizations, and referring agencies, whether for profit or not-for-profit; third, it would leave innocent victims without recourse in some situations by reducing the standard of care applicable to pilots; fourth, it does nothing to tackle the real problem, which is the insurance industry's failure to offer insurance to the volunteer pilot organizations; finally, it is poorly drafted and includes loopholes that would insulate international terrorist organizations from liability and subjects innocent bystanders to harm without any recourse.

H.R. 1084 flies in the face of the Volunteer Protection Act, a bill Congress passed into law

after 8 years of debate extending over 5 Congresses. The Volunteer Protection Act was carefully deliberated and negotiated, but this bill wipes the slate clean by giving volunteer pilots protection from liability despite the fact that the Volunteer Protection Act specifically excluded that category of volunteers from protection.

Under the Volunteer Protection Act, pilots and those operating aircraft were specifically left out of the liability exemption because of the highly dangerous nature of the activity and the fact that States require these pilots to have insurance. This bill undoes that and exempts pilots from liability.

Moreover, it goes further than the Volunteer Protection Act was willing to go by giving this exemption to not only the pilots, but also to staff, mission coordinators, officers and directors of volunteer pilot organizations, and referring agencies, whether for profit or not-for-profit. In the Volunteer Protection Act, Congress made sure that it was only the volunteers being protected.

Finally, H.R. 1084 does nothing to tackle the real problem, which is the insurance industry's failure to offer insurance to the volunteer pilot organizations. In testimony we heard on this bill, it was suggested that these nonprofit volunteer pilot organizations need liability protection because they can't get insurance. If this is the case, why not have a bill that requires insurance agencies to offer insurance to these organizations? Why not that instead of exempting everyone under the sun from liability?

This bill establishes national policy specifically allowing certain pilots to operate their aircraft negligently and still escape liability. And by immunizing both the negligent pilot and the organization that arranges and provides the transportation, this bill will in many cases leave the victims of an air tragedy—and their surviving families—with no means of seeking compensation for their loss. Congress should not turn its back on the victims of air tragedies.

For these reasons, I cannot support passage of this bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. OSE). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1084, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that, I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on questions previously postponed. Votes will be taken in the following order:

H. Res. 766, by the yeas and nays;
Motions to suspend the rules and
pass:

H.R. 3369, by the yeas and nays;

H.R. 1787, by the yeas and nays;

H.R. 1084, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

PROVIDING FOR CONSIDERATION
OF H.R. 4571, LAWSUIT ABUSE
REDUCTION ACT OF 2004

The SPEAKER pro tempore. The pending business is the vote on the adoption of House Resolution 766 on which further proceedings were postponed earlier today.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on resolution on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 228, nays 165, not voting 40, as follows:

[Roll No. 444]

YEAS—228

Aderholt	Ehlers	Latham
Akin	Emerson	LaTourette
Alexander	English	Leach
Bachus	Everett	Lewis (CA)
Baker	Feeney	Lewis (KY)
Barrett (SC)	Ferguson	Linder
Bartlett (MD)	Flake	LoBiondo
Barton (TX)	Foley	Lucas (KY)
Bass	Forbes	Lucas (OK)
Biggert	Fossella	Manzullo
Bilirakis	Franks (AZ)	Marshall
Bishop (UT)	Frelinghuysen	Matheson
Blunt	Galleghy	McCotter
Boehner	Garrett (NJ)	McCreery
Bonilla	Gerlach	McHugh
Bono	Gibbons	McKeon
Boozman	Gilchrest	McNulty
Boyd	Gillmor	Mica
Bradley (NH)	Gingrey	Miller (FL)
Brady (TX)	Goode	Miller (MI)
Brown (SC)	Goodlatte	Miller, Gary
Brown-Waite,	Granger	Moore
Ginny	Graves	Moran (KS)
Burgess	Green (WI)	Moran (VA)
Burns	Gutknecht	Murphy
Burr	Hall	Musgrave
Burton (IN)	Harris	Myrick
Buyer	Hart	Nethercutt
Calvert	Hastings (WA)	Neugebauer
Camp	Hayes	Ney
Cantor	Hayworth	Northup
Capito	Hefley	Norwood
Carter	Hensarling	Nunes
Castle	Herger	Nussle
Chabot	Hobson	Obey
Chocola	Hoekstra	Osborne
Coble	Holden	Ose
Cole	Hostettler	Otter
Collins	Hulshof	Pascarell
Cooper	Hyde	Paul
Cox	Isakson	Pearce
Cramer	Israel	Pence
Crane	Issa	Peterson (MN)
Crenshaw	Jenkins	Peterson (PA)
Cubin	Johnson (CT)	Petri
Culberson	Johnson (IL)	Pickering
Cunningham	Johnson, Sam	Pitts
Davis (CA)	Jones (NC)	Platts
Davis (TN)	Keller	Pombo
Davis, Jo Ann	Kelly	Porter
Davis, Tom	Kennedy (MN)	Portman
Deal (GA)	Kildee	Putnam
DeLay	King (IA)	Radanovich
DeMint	King (NY)	Ramstad
Diaz-Balart, L.	Kingston	Regula
Diaz-Balart, M.	Kirk	Rehberg
Doolittle	Kline	Renzi
Dreier	Knollenberg	Reynolds
Duncan	Kolbe	Rogers (AL)
Dunn	LaHood	Rogers (MI)

Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)

Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey

Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

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.

Stated against:

Mr. HINOJOSA. Mr. Speaker, on rollcall No. 444, had I been present, I would have voted "no."

NONPROFIT ATHLETIC ORGANIZA-
TION PROTECTION ACT OF 2003

The SPEAKER pro tempore (Mr. OSE). The pending business is the question of suspending the rules and passing the bill, H.R. 3369.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 3369 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 217, nays 176, not voting 40, as follows:

[Roll No. 445]

YEAS—217

Abercrombie
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Chandler
Costello
Cummings
Davis (AL)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon

NAYS—165

Green (TX)
Grijalva
Gutierrez
Harman
Hersteth
Hill
Hinchev
Holt
Honda
Hooley (OR)
Hoyer
Insee
Jackson (IL)
Jackson-Lee
 (TX)
Jefferson
John
Jones (OH)
Jones (OH)
Kanjorski
Kilpatrick
Kind
Kucinich
Lampson
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowe
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-
 McDonald
Miller (NC)
Miller, George
Mollohan
Murtha
Nadler
Napolitano

Neal (MA)
Oberstar
Olver
Ortiz
Pallone
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda
 T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Lee
Schiff
Scott (VA)
Sherman
Skelton
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

Aderholt	Doolittle	Knollenberg
Akin	Dreier	Kolbe
Alexander	Duncan	LaHood
Bachus	Edwards	Latham
Baker	Ehlers	LaTourette
Barrett (SC)	Emerson	Leach
Bartlett (MD)	English	Lewis (CA)
Barton (TX)	Everett	Lewis (KY)
Bass	Feeney	Linder
Biggert	Ferguson	LoBiondo
Bilirakis	Flake	Lucas (KY)
Bishop (GA)	Foley	Lucas (OK)
Bishop (UT)	Forbes	Matheson
Blunt	Fossella	McCotter
Boehner	Franks (AZ)	McCreery
Bonilla	Frelinghuysen	McHugh
Bono	Galleghy	McKeon
Boozman	Garrett (NJ)	Mica
Boyd	Gerlach	Miller (FL)
Bradley (NH)	Gibbons	Miller (MI)
Brady (TX)	Gilchrest	Miller, Gary
Brown (SC)	Gillmor	Moran (KS)
Brown-Waite,	Gingrey	Murphy
Ginny	Goode	Musgrave
Burgess	Goodlatte	Myrick
Burns	Granger	Nethercutt
Burr	Graves	Neugebauer
Burton (IN)	Green (WI)	Ney
Buyer	Gutknecht	Northup
Calvert	Hall	Norwood
Camp	Harris	Nunes
Cantor	Hart	Nussle
Capito	Hastings (WA)	Osborne
Carson (OK)	Hayes	Ose
Carter	Hayworth	Oxley
Case	Hefley	Pearce
Castle	Hensarling	Pence
Chabot	Herger	Peterson (PA)
Chandler	Hersteth	Petri
Chocola	Hobson	Pickering
Coble	Hoekstra	Pitts
Cole	Holden	Platts
Collins	Hostettler	Pombo
Cox	Hulshof	Porter
Cramer	Hyde	Portman
Crane	Isakson	Putnam
Crenshaw	Jenkins	Quinn
Cubin	Johnson (CT)	Radanovich
Culberson	Johnson (IL)	Ramstad
Cunningham	Johnson, Sam	Regula
Davis (TN)	Jones (NC)	Rehberg
Davis, Jo Ann	Keller	Renzi
Davis, Tom	Kelly	Reynolds
Deal (GA)	Kennedy (MN)	Rogers (AL)
DeLay	King (IA)	Rogers (MI)
DeMint	Kingston	Ros-Lehtinen
Diaz-Balart, L.	Kirk	Royce
Diaz-Balart, M.	Kline	Ryan (WI)

NOT VOTING—40

Ackerman
Ballenger
Beauprez
Blackburn
Boehlert
Bonner
Cannon
Clay
Clyburn
Conyers
Crowley
Engel
Gephardt
Goss

Greenwood
Hastings (FL)
Hinojosa
Hoeffel
Houghton
Hunter
Istook
Johnson, E. B.
Kaptur
Kennedy (RI)
Kleccka
Langevin
McInnis
Owens

□ 1222

Mr. WYNN, Ms. ESHOO, and Mr. THOMPSON of California changed their vote from "yea" to "nay."

Mr. MOORE changed his vote from "nay" to "yea."

Ryun (KS)
Sandlin
Saxton
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)

NAYS—176

Abercrombie
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Clyburn
Cooper
Costello
Cummins
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hill
Hinchey
Hinojosa

NOT VOTING—40

Ackerman
Ballenger
Beauprez
Blackburn
Boehlert
Bonner
Cannon
Clay
Conyers
Crowley
Dicks
Dunn
Engel
Gephardt

□ 1230

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

Stated for:
Mr. RUPPERSBERGER. Mr. Speaker, I was in a meeting with constituents and missed roll-call vote 445. If I was present for the vote I would have voted "yea" on H.R. 3369, the Nonprofit Athletic Organization Protection Act.

GOOD SAMARITAN VOLUNTEER FIREFIGHTER ASSISTANCE ACT OF 2003

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 1787, 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 Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1787, 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 397, nays 3, not voting 33, as follows:

[Roll No. 446]
YEAS—397

Abercrombie
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blumenauer
Blunt
Boehner
Bonilla
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite,
Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)

Jackson-Lee
(TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
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)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Hoyer
Hulshof
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)

NAYS—3

Nadler Paul Scott (VA)

NOT VOTING—33

Ackerman
Ballenger
Beauprez
Blackburn
Boehlert
Bonner
Cannon
Clay
Conyers
Crowley
Engel

ANNOUNCEMENT BY THE SPEAKER PRO TEMPOR

The SPEAKER pro tempore (Mr. DUNCAN) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1238

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.

VOLUNTEER PILOT ORGANIZATION PROTECTION ACT OF 2004

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 1084, 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 Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1084, 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 385, nays 12, not voting 36, as follows:

[Roll No. 447]

YEAS—385

Abercrombie	Castle	Forbes
Aderholt	Chabot	Ford
Akin	Chandler	Fossella
Alexander	Chocola	Frank (MA)
Allen	Clyburn	Franks (AZ)
Andrews	Coble	Frelinghuysen
Baca	Cole	Frost
Baird	Collins	Galleghy
Baker	Cooper	Garrett (NJ)
Baldwin	Costello	Gerlach
Barrett (SC)	Cox	Gibbons
Bartlett (MD)	Cramer	Gilchrest
Barton (TX)	Crane	Gillmor
Bass	Crenshaw	Gingrey
Becerra	Cubin	Gonzalez
Bell	Culberson	Goode
Berkley	Cummings	Goodlatte
Berman	Cunningham	Gordon
Berry	Davis (AL)	Granger
Biggert	Davis (CA)	Graves
Billirakis	Davis (FL)	Green (TX)
Bishop (GA)	Davis (IL)	Green (WI)
Bishop (NY)	Davis (TN)	Grijalva
Bishop (UT)	Davis, Jo Ann	Gutierrez
Blumenauer	Davis, Tom	Gutknecht
Blunt	Deal (GA)	Hall
Boehner	DeFazio	Harman
Bonilla	DeGette	Harris
Bono	Delahunt	Hart
Boozman	DeLauro	Hastings (WA)
Boswell	DeLay	Hayes
Boucher	DeMint	Hayworth
Boyd	Deutsch	Hefley
Bradley (NH)	Diaz-Balart, L.	Hensarling
Brady (PA)	Dicks	Herger
Brady (TX)	Dingell	Herseth
Brown (OH)	Doggett	Hill
Brown (SC)	Dooley (CA)	Hinojosa
Brown, Corrine	Doolittle	Hobson
Brown-Waite,	Doyle	Hoekstra
Ginny	Dreier	Holden
Burgess	Duncan	Holt
Burns	Dunn	Honda
Burr	Edwards	Hooley (OR)
Burton (IN)	Ehlers	Hostetler
Butterfield	Emanuel	Hoyer
Buyer	Emerson	Hulshof
Calvert	English	Hyde
Camp	Eshoo	Inslee
Cantor	Etheridge	Isakson
Capito	Evans	Israel
Capps	Everett	Istook
Capuano	Farr	Jackson (IL)
Cardin	Fattah	Jackson-Lee
Cardoza	Feeney	(TX)
Carson (IN)	Ferguson	Jefferson
Carson (OK)	Filner	Jenkins
Carter	Flake	John
Case	Foley	Johnson (CT)

Johnson (IL)	Moran (KS)
Johnson, Sam	Moran (VA)
Jones (NC)	Murphy
Jones (OH)	Murtha
Kanjorski	Musgrave
Kaptur	Myrick
Keller	Napolitano
Kelly	Neal (MA)
Kennedy (MN)	Nethercutt
Kildee	Neugebauer
Kilpatrick	Ney
Kind	Northup
King (IA)	Norwood
King (NY)	Nunes
Kingston	Nussle
Kirk	Oberstar
Kline	Obey
Knollenberg	Olver
Kolbe	Ortiz
Kucinich	Osborne
LaHood	Ose
Lampson	Otter
Lantos	Oxley
Larsen (WA)	Pallone
Larson (CT)	Pascrell
Latham	Pastor
LaTourette	Payne
Leach	Pearce
Lee	Pelosi
Levin	Pence
Lewis (CA)	Peterson (PA)
Lewis (GA)	Petri
Lewis (KY)	Pickering
Linder	Pitts
Lipinski	Platts
LoBiondo	Pombo
Lowe	Pomeroy
Lucas (KY)	Porter
Lucas (OK)	Portman
Lynch	Price (NC)
Majette	Pryce (OH)
Maloney	Putnam
Marshall	Quinn
Matheson	Radanovich
Matsui	Rahall
McCarthy (MO)	Ramstad
McCarthy (NY)	Rangel
McCollum	Regula
McCotter	Rehberg
McCrery	Renzi
McDermott	Reyes
McGovern	Reynolds
McHugh	Rodriguez
McIntyre	Rogers (AL)
McKeon	Rogers (MI)
McNulty	Rohrabacher
Meehan	Ross
Meek (FL)	Rothman
Meeks (NY)	Roybal-Allard
Menendez	Royce
Mica	Ruppersberger
Michaud	Rush
Millender-	Ryan (WI)
McDonald	Ryun (KS)
Miller (FL)	Sabo
Miller (MI)	Sánchez, Linda
Miller (NC)	T.
Miller, Gary	Sanchez, Loretta
Miller, George	Sanders
Mollohan	Sandlin
Moore	Saxton

NAYS—12

Hinchee	Nadler
Lofgren	Paul
Manzullo	Peterson (MN)
Markey	Ryan (OH)

NOT VOTING—36

Ackerman	Engel	Langevin
Bachus	Gephardt	McInnis
Ballenger	Goss	Owens
Beauprez	Greenwood	Rogers (KY)
Blackburn	Hastings (FL)	Ros-Lehtinen
Boehler	Hoefel	Schrock
Bonner	Houghton	Serrano
Cannon	Hunter	Slaughter
Clay	Issa	Tauzin
Conyers	Johnson, E. B.	Towns
Crowley	Kennedy (RI)	Velázquez
Diaz-Balart, M.	Kleczka	Whitfield

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1246

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.

PERSONAL EXPLANATION

Mr. ISSA. Mr. Speaker, today, I missed two recorded votes. If I had been present for rollcall vote No. 445, I would have voted "yea." If I had been present for rollcall vote No. 447, I would have voted "yea."

LAWSUIT ABUSE REDUCTION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 766, I call up the bill (H.R. 4571) to amend Rule 11 of the Federal Rules of Civil Procedure to improve attorney accountability, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 766, the bill is considered read for amendment.

The text of H.R. 4571 is as follows:

H.R. 4571

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 "Lawsuit Abuse Reduction Act of 2004".

SEC. 2. ATTORNEY ACCOUNTABILITY.

Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subdivision (c)—

(A) by amending the first sentence to read as follows: "If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the attorney, law firm, or parties that have violated this subdivision or are responsible for the violation, an appropriate sanction, which may include an order to the other party or parties to pay for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper, that is the subject of the violation, including a reasonable attorney's fee.";

(B) in paragraph (1)(A)—

(i) by striking "Rule 5" and all that follows through "corrected." and inserting "Rule 5."; and

(ii) by striking "the court may award" and inserting "the court shall award"; and

(C) in paragraph (2), by striking "shall be limited to what is sufficient" and all that follows through the end of the paragraph (including subparagraphs (A) and (B)) and inserting "shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. The sanction may consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney's fee."; and

(2) by striking subdivision (d).

SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AFFECTING INTERSTATE COMMERCE.

In any civil action in State court, the court, upon motion, shall determine within 30 days after the filing of such motion whether the action affects interstate commerce. Such court shall make such determination based on an assessment of the costs to the interstate economy, including the loss of jobs, were the relief requested granted. If the court determines such action affects interstate commerce, the provisions of Rule 11 of the Federal Rules of Civil Procedure shall apply to such action.

SEC. 4. PREVENTION OF FORUM-SHOPPING.

(a) **IN GENERAL.**—Subject to subsection (b), a personal injury claim filed in State or Federal court may be filed only in the State and, within that State, in the county (or Federal district) in which—

(1) the person bringing the claim, including an estate in the case of a decedent and a parent or guardian in the case of a minor or incompetent—

(A) resides at the time of filing; or
(B) resided at the time of the alleged injury; or

(2) the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred; or

(3) the defendant's principal place of business is located.

(b) **DETERMINATION OF MOST APPROPRIATE FORUM.**—If a person alleges that the injury or circumstances giving rise to the personal injury claim occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subsection.

(c) **DEFINITIONS.**—In this section:

(1) The term “personal injury claim”—

(A) means a civil action brought under State law by any person to recover for a person's personal injury, illness, disease, death, mental or emotional injury, risk of disease, or other injury, or the costs of medical monitoring or surveillance (to the extent such claims are recognized under State law), including any derivative action brought on behalf of any person on whose injury or risk of injury the action is based by any representative party, including a spouse, parent, child, or other relative of such person, a guardian, or an estate; and

(B) does not include a claim brought as a class action.

(2) The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, but not any governmental entity.

(3) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and any other territory or possession of the United States.

(d) **APPLICABILITY.**—This section applies to any personal injury claim filed in Federal or State court on or after the date of the enactment of this Act.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in section 3 or in the amendments made by section 2 shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.

The SPEAKER pro tempore. The amendment printed in the bill is adopted.

The text of the amendment in the nature of a substitute is as follows:

H.R. 4571

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 “Lawsuit Abuse Reduction Act of 2004”.

SEC. 2. ATTORNEY ACCOUNTABILITY.

Rule 11 of the Federal Rules of Civil Procedure is amended—

(1) in subdivision (c)—

(A) by amending the first sentence to read as follows: “If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the attorney, law firm, or parties that have violated this subdivision or are responsible for the violation, an appropriate sanction, which may include an order to the other party or parties to pay for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper, that is the subject of the violation, including a reasonable attorney’s fee.”;

(B) in paragraph (1)(A)—

(i) by striking “Rule 5” and all that follows through “corrected.” and inserting “Rule 5.”; and

(ii) by striking “the court may award” and inserting “the court shall award”; and

(C) in paragraph (2), by striking “shall be limited to what is sufficient” and all that follows through the end of the paragraph (including subparagraphs (A) and (B)) and inserting “shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. The sanction may consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney’s fee.”; and

(2) by striking subdivision (d).

SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AFFECTING INTERSTATE COMMERCE.

In any civil action in State court, the court, upon motion, shall determine within 30 days after the filing of such motion whether the action affects interstate commerce. Such court shall make such determination based on an assessment of the costs to the interstate economy, including the loss of jobs, were the relief requested granted. If the court determines such action affects interstate commerce, the provisions of Rule 11 of the Federal Rules of Civil Procedure shall apply to such action.

SEC. 4. PREVENTION OF FORUM-SHOPPING.

(a) IN GENERAL.—Subject to subsection (b), a personal injury claim filed in State or Federal court may be filed only in the State and, within that State, in the county (or Federal district) in which—

(1) the person bringing the claim, including an estate in the case of a decedent and a parent or guardian in the case of a minor or incompetent—

*(A) resides at the time of filing; or
(B) resided at the time of the alleged injury; or*

(2) the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred; or

(3) the defendant's principal place of business is located.

(b) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the injury or circumstances giving rise to the personal injury claim occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would be

the most appropriate forum for a claim, the court shall dismiss the claim. Any otherwise applicable statute of limitations shall be tolled beginning on the date the claim was filed and ending on the date the claim is dismissed under this subsection.

(c) DEFINITIONS.—In this section:

(1) The term “personal injury claim”—

(A) means a civil action brought under State law by any person to recover for a person's personal injury, illness, disease, death, mental or emotional injury, risk of disease, or other injury, or the costs of medical monitoring or surveillance (to the extent such claims are recognized under State law), including any derivative action brought on behalf of any person on whose injury or risk of injury the action is based by any representative party, including a spouse, parent, child, or other relative of such person, a guardian, or an estate; and

(B) does not include a claim brought as a class action.

(2) The term “person” means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, but not any governmental entity.

(3) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and any other territory or possession of the United States.

(d) APPLICABILITY.—This section applies to any personal injury claim filed in Federal or State court on or after the date of the enactment of this Act.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in section 3 or in the amendments made by section 2 shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.

SEC. 6. THREE-STRIKES RULE FOR SUSPENDING ATTORNEYS WHO COMMIT MULTIPLE RULE 11 VIOLATIONS.

(a) MANDATORY SUSPENSION.—Whenever a Federal district court determines that an attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall determine the number of times that the attorney has violated that rule in that Federal district court during that attorney's career. If the court determines that the number is 3 or more, the Federal district court—

(1) shall suspend that attorney from the practice of law in that Federal district court for 1 year; and

(2) may suspend that attorney from the practice of law in that Federal district court for any additional period that the court considers appropriate.

(b) APPEAL; STAY.—An attorney has the right to appeal a suspension under subsection (a). While such an appeal is pending, the suspension shall be stayed.

(c) REINSTATEMENT.—To be reinstated to the practice of law in a Federal district court after completion of a suspension under subsection (a), the attorney must first petition the court for reinstatement under such procedures and conditions as the court may prescribe.

SEC. 7. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION.

(a) IN GENERAL.—Whoever willfully and intentionally influences, obstructs, or impedes, or attempts to influence, obstruct, or impede, a pending court proceeding through the willful and intentional destruction of documents sought in, and highly relevant to, that proceeding shall be punished with mandatory civil sanctions of a degree commensurate with the civil sanctions available under Rule 37 of the Federal Rules of Civil Procedure, in addition to any other civil sanctions that otherwise apply.

(b) APPLICABILITY.—This section applies to any court proceeding in any Federal or State court.

The SPEAKER pro tempore. After one hour of debate on the bill, as

amended, it shall be in order to consider the further amendment printed in House Report 108-684, if offered by the gentleman from Texas (Mr. TURNER), or his designee, which shall be considered read, and shall be debatable for 40 minutes, equally divided and controlled by the proponent and an opponent.

□ 1245

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Virginia (Mr. SCOTT) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

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

Mr. Speaker, recently President Bush said, "We must protect small business owners and workers from the explosion of frivolous lawsuits that threaten jobs across America." Even Senator KERRY claims to support national legislation in which "lawyers who file frivolous cases would face tough, mandatory sanctions, including a 'three strikes and you're out' provision that forbids lawyers who file three frivolous cases from bringing another suit for the next 10 years." Well, help is on the way.

H.R. 4571, the Lawsuit Abuse Reduction Act, would restore mandatory sanctions and monetary penalties under Federal rule 11 of the Federal Rules of Civil Procedure for filing frivolous lawsuits and abusing the litigation process. It would also extend these same protections to cover State cases that a State judge determines to have interstate effects, and it would prevent forum shopping by requiring personal injury cases to be brought only where the plaintiff lives or was allegedly injured, or where the defendant's principal place of business is located.

H.R. 4571 will also apply a "three strikes and you're out" rule to attorneys who commit multiple rule 11 violations in Federal district court and impose mandatory civil sanctions for willful and intentional document destruction intended to obstruct the pending court proceeding. The bill would apply to lawsuits brought by individuals as well as businesses, and it expressly precludes the application of the bill to civil rights cases if applying the bill to such cases would bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law.

Today, frivolous lawsuits are legalized extortion. Without the threat of certain punishment for filing frivolous lawsuits, innocent people and small businesses will continue to face the harsh economic reality that simply paying off frivolous claims through monetary settlements is always cheaper than litigating the case until no fault is found.

No part of American society rests easy in a legal culture of fear. Churches are discouraging counseling by ministers. Children have learned to threat-

en teachers with lawsuits. Youth sports are shutting down in the face of lawsuits for injury or even hurt feelings. Monkey bars and other once-common equipment are now endangered species at playgrounds. As a result, children stay at home and get fat, and their parents sue the restaurants that serve them. The Girl Scouts in metro Detroit alone have to sell 36,000 boxes of cookies each year just to pay for liability insurance, 36,000 boxes of cookies.

Good Samaritans are told to hit the road. When one man routinely cleared a trail after snowstorms, the county had to ask him to stop. The supervisor of district operations wrote, "If a person falls, you are more liable than if you had never plowed at all. Crazy world. Unfortunately, the times we are in allow for a much more litigious environment than common sense would dictate."

Because existing rules against frivolous lawsuits are ineffective, the right to sue has not only been exploited by lawyers; it has been turned into one of the most destructive business models in the American economy. Today, personal injury lawyers can gamble on taking cases on a contingency-fee basis because they only need to win one in 10 to score the big judgment that would make up for the losses in other cases. We all live with the consequences, including higher taxes and insurance rates; chaos in our schools; doctors going out of business, limiting Americans' access to health care.

Small businesses and workers may suffer the most. The Nation's oldest ladder manufacturer, the family-owned John S. Tilley Ladders Company near Albany, New York, recently filed for bankruptcy protection and sold off most of its assets due to litigation costs. Founded in 1855, the Tilley firm could not handle the cost of liability insurance, which had risen from 6 percent of sales a decade ago to 29 percent, even though the company had never lost an actual court judgment.

Sadly, the Federal rule designed to deter frivolous lawsuits was gutted over 10 years ago; and today, we live with the results. Shockingly, rule 11 of the Federal Rules of Civil Procedure does not require sanctions or even allow monetary penalties against parties who bring frivolous lawsuits. Without certain punishment for those who bring frivolous lawsuits, and the threat of monetary penalties to compensate the victims of frivolous lawsuits, there is little incentive for lawsuit victims to spend time and money seeking sanctions for lawsuit abuse.

Rule 11 also does not allow sanctions for the abuses of the discovery process. Rule 11 as currently written even allows lawyers to avoid sanctions entirely from making frivolous claims by withdrawing them within 3 weeks. Such a rule actually encourages frivolous lawsuits because personal injury attorneys can file harassing pleadings, secure in the knowledge that they have nothing to lose. If someone objects,

they can simply retreat without penalty. H.R. 4571 closes all of these loopholes.

Forum shopping further encourages frivolous litigation. Lax rules regarding where a lawsuit can be brought have turned certain parts of the country into lawsuit factories, the only factories that lose jobs rather than creating them. One of the Nation's wealthiest personal injury attorneys described what he calls "magic jurisdictions" as follows: "What I call the 'magic jurisdiction' is where the judiciary is elected with verdict money. The trial lawyers have established relationships with the judges that are elected. It's almost impossible to get a fair trial if you're a defendant in some of these places. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or law is." H.R. 4571 would prevent the unfair practice of forum shopping that currently allows personal injury lawyers to sue wherever the most favorable court is.

Congress cannot sit back and allow the personal injury lawyers to bankrupt the very concept of personal responsibility that has made America great. I urge my colleagues to support this bipartisan legislation that will protect both America's values and its vital small businesses.

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

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume, and I rise to speak against the bill.

Mr. Speaker, I do not support the legislation because it will have a significant adverse effect on the ability of unpopular plaintiffs to seek recourse in our courts, and it will operate to benefit foreign corporate defendants at the expense of domestic counterparts and will skew the playing field against injured victims.

Now, a lot of organizations oppose the bill, and I would like to read from a letter from the Judicial Conference of the United States, the Chief Justice of the United States presiding, in a letter to the committee chairman.

It says that "section 2 of the bill would reinstitute a rule eliminated in 1993 upon the recommendation of the Judicial Conference, approved by the Supreme Court, and after review by Congress, because of the serious problems it engendered during a 10-year period of operation. Section 2 also would amend rule 11 of the Federal Rules of Civil Procedure in a manner consistent with the longstanding Judicial Conference policy opposing direct amendment of the Federal rules by legislation."

The letter goes on to say that the bill "would directly amend civil rule 11 to remove a court's discretion to impose sanctions on a frivolous filing and eliminate the rule's 'safe-harbor' provisions. The bill undoes amendments to rule 11 that took effect on December 1, 1993, and would bring back the provisions that were first introduced in 1983

and removed from the rule in 1993, after a decade of signally bad experiences with the operation and effects of the 1983 rule."

The Judicial Conference of the United States goes on to state: "Like H.R. 4571, the 1983 version of rule 11 required sanctions for every violation of the rule. It spawned thousands of court decisions and generated widespread criticism. The rule was abused by resourceful lawyers, and an entire 'cottage industry' developed that churned tremendously wasteful satellite litigation that had everything to do with strategic gamesmanship and little to do with underlying claims. Rule 11 motions came to be met with counter motions that sought rule 11 sanctions for making the original rule 11 motion.

"Some of the serious problems caused by the 1983 amendments to rule 11 included:

"Creating a significant incentive to file unmeritorious rule 11 motions by providing a possibility of monetary penalty."

It goes on to cite other problems that occurred that were cured in 1993. The letter goes on: "The 1993 amendments to rule 11 were designed to strike a fair and equitable balance between competing interests, remedy the major problems with the rule, and allow courts to focus on the merits of the underlying cases rather than on rule 11 motions."

It goes on to say that the "experience with the amended rule since 1993 has demonstrated a marked decline in rule 11 satellite litigation without any noticeable increase in the number of frivolous filings. In June 1995, the Federal Judicial Center conducted a survey of 1,130 lawyers and 148 judges on the effects of the 1993 rule 11 amendments . . . The Center found general satisfaction with the amended rule. It also found that more than 75 percent of the judges and lawyers would oppose a provision that would require a court to impose a sanction when the rule is violated. A majority of the judges and lawyers, both plaintiffs' and defendants' lawyers, believed that groundless litigation was handled effectively by judges.

"Undoing the 1993 rule 11 amendments, even though no serious problem has been brought to the Judicial Conference rules committee's attention, would frustrate the purpose and intent of the Rules Enabling Act."

It goes on to criticize the provisions in section 3, the mandatory application to State laws, and section 4, the provision on forum shopping.

Mr. Speaker, in addition to the Judicial Conference, other organizations oppose the legislation. The NAACP, the Public Citizen, the Alliance for Justice, People for the American Way, the American Association of People with Disabilities, the Lawyers' Committee for Civil Rights Under Law, the American Bar Association, the National Conference of State Legislatures, Na-

tional Partnership for Women, National Women's Law Center, the Center for Justice and Democracy, Consumers Union, National Association of Consumer Advocates, USAction, U.S. PIRG, and the NAACP Legal Defense Fund all oppose the legislation.

Mr. Speaker, one of the additional problems with the bill is the chilling effect it may have on bringing important, legitimate, unpopular actions. This is due to the fact that much of the impetus of the 1993 changes stemmed from abuses by defendants in civil rights cases, namely, that civil rights defendants were choosing to harass civil rights plaintiffs by filing a series of rule 11 motions intended to slow down and impede meritorious cases.

Although the bill states that the proposed rule 11 changes shall not be construed to "bar or impede the assertion of new claims or remedies under Federal, State or local civil rights law," the language does not clearly and simply exempt civil rights and discrimination cases under current law, as should be the case. Determining what a new claim or remedy might be would just add to the litigation.

Certainly, it does not cover the fact that this bill and rule 11 do not offer an attorney the ability to appeal a rule 11 sanction. History has demonstrated that civil rights lawsuits are often extremely unpopular, particularly in certain parts of the country where some judges almost automatically consider civil rights cases as frivolous. In such courts, plaintiffs' attorneys could be unreasonably subject to sanctions, even suspensions, without appeal contrary to the purpose of rule 11.

□ 1300

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 6 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, for yielding me this time.

Mr. Speaker, frivolous lawsuits bankrupt individuals, ruin reputations, drive up insurance premiums, increase health care costs, and put a drag on the economy. Frivolous lawsuits are brought, for example, where there is no evidence that shows negligence on the part of the defendant. These nuisance lawsuits make a mockery of our legal system.

Of course, many Americans have legitimate legal grievances, from someone wrongly disfigured during an operation to a company responsible for contaminating a community's water supply. No one who deserves justice should be denied justice. However, gaming of a system by a few lawyers drives up the cost of doing business and drives down the integrity of the judicial system.

Let me give some examples. The Chief Executive Officer of San Antonio's Methodist Children's Hospital was

sued after he stepped into a patient's hospital room and asked how he was doing. Of course, a jury cleared him of any wrongdoing.

A Pennsylvania man sued the Frito-Lay company, claiming that Doritos chips were "inherently dangerous" after one stuck in his throat. After 8 years of costly litigation, the Pennsylvania Supreme Court threw out the case, writing that there is "a common sense notion that it is necessary to properly chew hard foodstuffs prior to swallowing."

In a New Jersey Little League game, a player lost sight of a fly ball because of the sun. He was injured when the ball struck him in the eye. The coach was forced to hire a lawyer after the boy's parents sued. The coach settled the case for \$25,000.

Today, almost any party can bring any suit in almost any jurisdiction. That is because plaintiffs and their attorneys simply have nothing to lose. All they want is for the defendant to settle. This is legalized extortion. It is lawsuit lottery.

Some lawyers file lawsuits for reasons that can only be described as absurd. They sue a theme park because its haunted houses are too scary. They sue the Weather Channel for an inaccurate forecast. And they sue McDonald's, claiming a hot pickle dropped from a hamburger caused a burn and mental injury.

Defendants, on the other hand, can unfairly lose their careers, their businesses and their reputations. In short, they can lose everything. This is not justice, and there is a remedy. The Lawsuit Abuse Reduction Act.

Mr. Speaker, this applies to both plaintiffs who file frivolous lawsuits merely to extort financial settlements and to defendants who unnecessarily prolong the legal process. If the judge determines a claim is frivolous, then they can order that person to pay the attorney's fees of the party who is the victim of their frivolous claim. This will make a lawyer think twice before he or she brings a lawsuit.

In addition, this legislation prevents forum shopping. It requires that personal injury claims be filed only where the plaintiff resides, where the injury occurred, or where the defendant's principal place of business is located. This provision addresses the growing problem of attorneys who shop around the country for judges who routinely award excessive amounts.

One of the Nation's wealthiest trial lawyers, Dickie Scruggs, has told us exactly how this abuse occurs, and the chairman of the Committee on the Judiciary used this example a while ago, but, quite frankly, it is just too good not to repeat.

Here is what one of the king of torts says about forum shopping: "What I call 'the magic jurisdiction.' It's where the judiciary is elected with verdict money, the trial lawyers have established relationships with the judges that are elected; they've got large populations of voters who are in on the

deal, they're getting their piece in many cases. It's almost impossible to get a fair trial if you're a defendant in some of these places. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or law is."

Mr. Speaker, I do not know how anyone can justify the continuation of this kind of abuse. One of these magic jurisdictions where trial lawyers flock is in my home State of Texas in Jefferson County. The Austin American Statesman noted that trial lawyers claim this is where "juries pass down sizable judgments." Soaring medical liability insurance rates have followed, which has caused doctors to flee the area.

Mr. Speaker, forum shopping is a part of lawsuit abuses and we must pass legislation to stop it from occurring. The following organizations support H.R. 4571: American Tort Reform Association, National Association of Home Builders, National Association of Manufacturers, National Restaurant Association, National Federation of Independent Business, American Insurance Association, and the U.S. Chamber of Commerce.

Also, I might add, both Republican and Democratic presidential and vice presidential candidates are on record as wanting to stop frivolous lawsuits. So the Lawsuit Abuse Reduction Act is sensible reform that will help restore confidence to America's justice system.

Mr. Speaker, I want to add one point and address a concern that was raised by my friend from Virginia and that had to do with a letter he raised from the Judicial Conference. Well, the Judicial Conference does not exactly enhance their credibility when they take a position contrary to the judges that they purport to represent. And, in fact, in surveys taken by the Judicial Conference before the rule was changed in 1993, it found that 80 percent of the judges favored the rule that we seek to go back to. After the rule was changed and weakened, which we opposed, they took another survey and found a majority of judges, in fact almost a majority of trial lawyers, liked the original rule that we seek to go back to in this legislation.

So, Mr. Speaker, I urge my colleagues to support this bill.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume to comment that the letter from the Judicial Conference of the United States outlining the survey results, showed a majority of judges, lawyers, both plaintiffs and defense lawyers, believed that groundless litigation was handled effectively by the judges and preferred the 1993 amendment.

Mr. Speaker, I submit herewith the letter from the Judicial Conference for the RECORD.

JUDICIAL CONFERENCE OF
THE UNITED STATES,
Washington, DC, July 9, 2004.

Hon. F. JAMES SENSENBRENNER, JR.,
Chairman, Committee on the Judiciary, House
of Representatives, 2138 Rayburn House Of-
fice Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Judicial Conference, I write to urge you to reconsider your position on the "Lawsuit Abuse Reduction Act of 2004" (H.R. 4571). [Section 2 of the bill would reinstitute a rule eliminated in 1993 upon the recommendation of the Judicial Conference, approval by the Supreme Court, and after review by Congress, because of the serious problems it engendered during a ten-year period of operation. Section 2 also would amend Rule 11 of the Federal Rules of Civil Procedure in a manner inconsistent with the longstanding Judicial Conference [policy opposing direct amendment of the federal rules by legislation.] Section 3 of H.R. 4571 would apply the revised federal Rule 11 to certain state court actions, while section 4 would amend the venue standards governing the filing of tort actions in both the federal and state courts; Sections 3 and 4 implicate federal-state comity interests and raise important policy and practical concerns.

SECTION 2

[Section 2 would directly amend Civil Rule 11 to remove a court's discretion to impose sanctions on a frivolous filing and eliminate the rule's "safe-harbor" provisions. The bill undoes amendments to Rule 11 that took effect on December 1, 1993, and would bring back the provisions that were first introduced in 1983 and removed from the rule in 1993, after a decade of signally bad experiences with the operation and effects of the 1983 rule.

Like H.R. 4571, the 1983 version of Rule 11 required sanctions for every violation of the rule. It spawned thousands of court decisions and generated widespread criticism. The rule was abused by resourceful lawyers, and an entire "cottage industry" developed that churned tremendously wasteful satellite litigation that had everything to do with strategic gamesmanship and little to do with underlying claims. Rule 11 motions came to be met with counter motions that sought Rule 11 sanctions for making the original Rule 11 motion.

[Some of the other serious problems caused by the 1983 amendments to Rule 11 included:

- (1) Creating a significant incentive to file unmeritorious Rule 11 motions by providing a possibility of monetary penalty;
- (2) engendering potential conflict of interest between clients and their lawyers, who advised withdrawal of particular claims despite the clients' preference;
- (3) exacerbating tensions between lawyers; and
- (4) providing little incentive, and perhaps a distinctive disincentive, to abandon or withdraw a pleading or claim—and thereby admit error—that lacked merit after determining that it no longer was supportable in law or fact.

The 1993 amendments to Rule 11 were designed to strike a fair and equitable balance between competing interests, remedy the major problems with the rule, and allow courts to focus on the merits of the underlying cases rather than on Rule 11 motions. The rule establishes a safe harbor, providing a party 21 days within which to withdraw a particular claim or defense before sanctions can be imposed. If the party fails to withdraw an allegedly frivolous claim or defense within the 21 days, a court may impose sanctions, including assessing reasonable attorney fees.] The 1983 Rule 11 authorized a court to sanction discovery-related abuse under

Rule 11, Rule 26(g), or Rule 37, which created confusion. Under the 1993 amendments to Rule 11, sanctioning of discovery-related abuse was limited to Rules 26 and 37, which provide for sanctions that include awards for reasonable attorney fees.

The 1993 amendments to Rule 11 culminated a long, critical examination of the rule begun four years earlier. The Advisory Committee on Civil Rules (Advisory Committee) reviewed a significant number of empirical examinations of the 1983 Rule 11, including three separate studies conducted by the Federal Judicial Center in 1985, 1988, and 1991, a Third Circuit Task Force report on Rule 11 in 1989, and a New York State Bar Committee report in 1987. The Advisory Committee took note of several book-length analyses of Rule 11 case law.

The 1991 Federal Judicial Center survey noted that most federal judges believed that the 1983 version of Rule 11 had positive effects. But the study also noted that most judges found several other methods more effective than Rule 11 in handling such litigation and, most significantly, that about one-half of the judges reported that Rule 11 exacerbates behavior between counsel. After reviewing the literature and empirical studies of problems caused by the 1983 amendments to Rule 11, the Advisory Committee issued in 1990 a preliminary call for general comment on the operation and effect of the rule. The response was substantial, calling for a change in the rule.

The Advisory Committee concluded that the cost-shifting in Rule 11 created an incentive for too many unnecessary Rule 11 motions. Amendments to Rule 11 were drafted. The Supreme Court promulgated and transmitted the amendments to Congress in May 1993 after extensive scrutiny and debate by the bench, bar, and public in accordance with the Rules Enabling Act process (28 U.S.C. §§ 2071-2077).

[Experience with the amended rule since 1993 has demonstrated a marked decline in Rule 11 satellite litigation without any noticeable increase in the number of frivolous filings. In June 1995, the Federal Judicial Center conducted a survey of 1,130 lawyers and 148 judges on the effects of the 1993 Rule 11 amendments. About 580 attorneys and 120 judges responded to the survey. The Center found general satisfaction with the amended rule. It also found that more than 75 percent of the judges and lawyers would oppose a provision that would require a court to impose a sanction when the rule is violated. A majority of the judges and lawyers, both plaintiffs' and defendants' lawyers, believed that groundless litigation was handled effectively by judges.

Undoing the 1993 Rule 11 amendments, even though no serious problem has been brought to the Judicial Conference rules committees' attention, would frustrate the purpose and intent of the Rules Enabling Act. Section 2 of H.R. 4571 would effectively reinstate the 1983 version of Rule 11 that proved so contentious and wasted so much time and energy of the bar and bench. Section 2, indeed, in some ways seems to go beyond the provisions that created serious problems with the 1983 rule. It may cause even greater mischief. Rule 11 in its present form has proven effective and should not be revised.]

SECTIONS 3 AND 4

[Section 3 would extend the new requirements of a mandatory Rule 11 to all state court litigation that the state court deems, on motion, to affect interstate commerce.] Two features of this provision stand out. First, it would directly regulate the practice and procedure of state courts, mandating a federal standard for the imposition of sanctions for the filing of frivolous or

ungrounded complaints and other papers in state court. At present, states have been free to adopt their own rules of practice, including a version of Rule 11, if a state so chooses. Second, section 3 does not specify the actions to which it would apply. Rather, it imposes on state judges a broad generalized test to determine whether or not federal Rule 11 would apply in a given case. If enacted, this section could affect the cost and duration of a very large number of civil actions in state courts.

[Section 4 seeks to prevent forum shopping by specifying the places where a plaintiff may bring a "personal injury" claim by imposing a federal standard for determining the venue of state law personal injury claims, in both state and federal court. Such a federal standard would displace existing state venue rules or statutes.] It would also significantly alter the statutes in title 28, United States Code, that now govern venue (section 1391) and transfer of venue (section 1404) in the federal courts.

The Judicial Conference opposes the enactment of H.R. 4571 for the reasons stated above as to section 2. Sections 3 and 4 would make important changes in the administration of civil justice in both federal and state courts. The Judicial Conference has not had the opportunity to formally assess the advisability or impact of these sections, but notes that they may substantially affect federal-state comity interests and raise important policy and practical concerns.

The Judicial Conference greatly appreciates your consideration of its views: If you or your staff have any questions, please contact Michael W. Blommer, Assistant Director, Office of Legislative Affairs, Administrative Office of the U.S. Courts, at (202) 502-1700.

Sincerely,

LEONIDAS RALPH MECHAM,

Secretary.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. BERMAN).

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

Mr. BERMAN. Mr. Speaker, I wonder if the majority ever steps back for a second and looks at the situation that they are in. They run around asking the Committee on the Judiciary in the House to pass legislation stripping Federal courts of jurisdiction, including the U.S. Supreme Court of jurisdiction, to decide fundamental constitutional questions presented under the U.S. Constitution, and at the same time they run around asking the Committee on the Judiciary of the House and the House of Representatives to pass bills writing the venue laws for personal injury actions brought in State court.

This is Federal intrusion in areas traditionally reserved for the States and an effort to reverse everything that *Marbury v. Madison* and all of its subsequent cases have said with respect to the Federal Judiciary's role in dealing with questions arising under the Constitution.

My friend, the very able chairman of the Committee on the Judiciary, says on the question of frivolous lawsuits, help is on the way. But the truth is, help is not on the way for those who are looking for it. The germ of a good idea, mandatory sanctions for filing of frivolous pleadings or frivolous mo-

tions, improved by an amendment by the gentleman from Florida (Mr. KELLER), to say that where an attorney is responsible for three such frivolous filings he is subject to suspension, that to be reviewed by an appellate court so that there are real teeth and deterrence to the filing of frivolous lawsuits, is combined with an overreaching, egregious effort to exchange the venue laws of 50 State legislatures and the courts of those States with respect to personal injury actions, any of which could be corrected by those State legislatures on their own in matters having no serious Federal interest.

Once again, the Republican majority, as it has done consistently for the past 10 years in the area of tort reform, overreaches. It takes a good idea, adds so many outrageous and overreaching provisions to that good idea that the other House ignores it.

Let us go back and look at a little history. In 1994, the Republicans came down with their Contract For America, and one of them was tort reform. I will give a classic example. In the committee they eliminate joint and several liability. There are arguments for it and there are arguments against it. Either the plaintiff who is not able to recover and made whole is hurt, or some defendant is potentially liable for the entire judgment, even though he is only partially responsible.

In the Committee on Rules two amendments are offered; one to take care of the minor tort feasers, the people who are involved in a relatively small amount of the negligent conduct that produced the injury; and the other one to wipe out that rule. The Republican majority, fearful that the compromise proposal might pass the House, does not allow the rule for that amendment to go through and, instead, allows the one to simply reinstate the existing law.

In that bill, which of course never passed the Senate, in the medical malpractice legislation, where they resisted any effort to make the caps on pain and suffering relevant to today's costs and today's times and the current situation, whether it is on class action lawsuits, where they sought to suck up all State actions without any balance, they have consistently overreached. And the result, as they are doing with this bill, of overreaching is that we lose a chance to make some improvement in the present system to deal effectively, in this case with frivolous lawsuits, because they want everything or they want the issue, and end up with nothing.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT).

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

Over the past decade, our Nation has witnessed an explosion of civil lawsuits. Large jury awards and settlements have produced an ever-growing number of actions in Federal and State

courts, costing the American people more than \$200 billion each year and really drastically reshaping our civil justice system.

Tort liability was developed to hold responsible those parties who injure or harm others through actions determined to be negligent or reckless or careless. However, civil actions are increasingly being used to harass and threaten and manipulate innocent parties, undermining the credibility and traditional notions of justice in this country.

In 1993, Rule 11 of the Federal Rules of Civil Procedure, the Federal safeguard against Federal lawsuits, was weakened, thereby making frivolous claims easier to file. Those changes to Rule 11 provided judges with more leeway to avoid sanctioning attorneys who filed meritless claims.

For example, the rule changes allowed trial attorneys a 21-day "safe-harbor period" to correct or withdraw meritless claims without fear of penalty, often at the expense of innocent defendants.

While a number of initiatives have been introduced in Congress to reform specific aspects of the tort system, such as medical malpractice reform, small business reform, and product liability reform, or the 18-year Statute of Repose, the legislation that is being offered on the floor today seeks to reduce frivolous lawsuits on a broader scale.

Restoring Rule 11, with its intended authority and expanding its applicability, the Lawsuit Abuse Reduction Act will put teeth back into the safeguard against frivolous claims. This legislation will remove the safe-harbor provision I mentioned before, it would authorize judges to impose sanctions, including monetary, against attorneys and parties who file meritless claims, it would extend sanctions to discovery, and it would extend Rule 11 claims that affect interstate commerce.

Mr. Speaker, I would strongly urge my colleagues to support this legislation.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentleman from North Carolina (Mr. WATT).

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

Let me first agree with my colleagues on both sides of the aisle that I do not think anybody really likes frivolous litigation, and this bill provides an opportunity for people to get up and say that. I think if we were to ask either the Republican or the Democratic nominees for President and Vice President that are out there running, all of them will say, no, I do not like frivolous litigation.

The problem here is that my colleagues just do not want to be confused by the facts, because this bill is going to do more to encourage frivolous litigation, potentially, than it is going to do to discourage frivolous litigation. The Judicial Conference of the United States has made that clear in the letter that has been introduced into the

RECORD in which they say that the provisions of this bill, which go back to the rules that were in effect prior to 1983, those rules were changed because they spawned a whole cottage industry of litigation related to frivolous lawsuits.

□ 1315

So even if this were going to discourage frivolous lawsuits, which they say it would not, you are going to engender a whole new set of problems because what they say happened was Rule 11 motions came to be met with countermotions that sought Rule 11 sanctions for making the original Rule 11 motion. What sense does that make that we would set up a system to encourage people to file countermotions against each other claiming that the other side was frivolous in what they were doing in the lawsuit?

The Judicial Conference is clear that this bill would provide incentives to encourage litigants to keep a frivolous claim in court because if they ever withdrew the frivolous claim, it in effect would be a concession that it was frivolous. So somebody files a lawsuit, realizes they have a bad claim, then has no way of getting out of it because they are afraid to withdraw the claim because somebody is going to hit them with sanctions, and the fact that they withdrew the claim is an admission that it was a frivolous claim. It is going to set up situations where lawyers are put in conflicts of interest with their clients because the client wants to pursue a claim that may be frivolous, the lawyer does not want to pursue it, realizes that the claim is frivolous and cannot back out of it without getting into a conflict of interest with their client. All of that is outlined in the letter from the Judicial Conference.

This is not really about doing something that is going to discourage frivolous lawsuits, this bill is going to encourage frivolous lawsuits and encourage pursuit of frivolous lawsuits in a way that the Judicial Conference has outlined clearly.

There seems to be this mentality, I hate frivolous lawsuits and do not confuse me with the facts because that is not what I am interested in. We should vote this bill down and keep the rules in place that are there that allow judges to make reasonable decisions in their courts.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, the Judicial Conference has amnesia and they did not look back into the history of what happened between 1983 and 1993 when the rules that this bill proposes were in place.

In 1991, the Judicial Conference Advisory Committee on Civil Rule did a survey and reviewed Rule 11. At that time 751 Federal judges found that an overwhelming majority of them, 95 percent, believed Rule 11 did not impede development of the law; 72 percent believed that the benefits of the rule out-

weighed any additional requirement of judicial time; 81 percent believed that the 1983 version of Rule 11 had a positive effect on litigation in the Federal courts; and 80 percent believed that the rule should be retained in its then-current form. That is what the judges who were on the bench at the time this rule was in effect said.

The Judicial Conference ought to spend their time looking back at their own records and their own surveys rather than sending these types of letters advising us that what we are doing here is no good.

Mr. Speaker, I yield 2½ minutes to the gentleman from Florida (Mr. KELLER).

Mr. KELLER. Mr. Speaker, I rise today in strong support of the Lawsuit Abuse Reduction Act of 2004. The overriding central purpose of this legislation is to prevent frivolous lawsuits from being filed in the first place. To achieve this, we provide for tough, mandatory sanctions, including a three strikes and you are out penalty, which I authored.

Now should Members vote for this legislation? To determine that answer, may I suggest that Members consider three questions:

First, do Members believe frivolous lawsuits waste good people's time and money?

Second, should lawyers who bring frivolous lawsuits face tough mandatory sanctions?

Third, when a court has determined that an attorney has brought at least three frivolous lawsuits under Rule 11, should there be a three strikes and you are out penalty?

If the answers to those questions are yes, Members should vote in favor of this legislation. In fact, I will take it a step further and tell Members flat out that the answers to those questions are yes, at least according to Senator JOHN EDWARDS, a Democrat from North Carolina, who was a plaintiff's personal injury attorney.

On December 15, 2003, Newsweek magazine published an article written by Senator JOHN EDWARDS where he said, "Frivolous lawsuits waste good people's time and hurt the real victims. Lawyers who bringing frivolous cases should face tough, mandatory sanctions, with a 'three strikes' penalty."

Mr. Speaker, I agree, and that is precisely what this legislation does. Congress should act today in a bipartisan manner to prevent and punish frivolous lawsuits. We should care about each more and sue each other less. I urge my colleagues to vote yes on the Lawsuit Abuse Reduction Act of 2004.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Speaker, I rise in strong opposition both to this bill and to the process which produced it. H.R. 4571 would make fundamental changes to the Rule 11 sanctions process without our even receiving the benefit of input from either the Judicial Conference or the Supreme Court.

Mr. Speaker, it is obvious that the proponents of this legislation do not want to hear from our judges because they know that the vast majority of our judges do not agree with this bill. As a matter of fact, I think that this bill could appropriately be named big business versus the people.

Mr. Speaker, big businesses pay expensive lawyers by the hour to protect their interests. Trial lawyers handling many of these cases that are being termed frivolous are paid only if they win.

I would like to quote John Q. Quinn, a veteran trial lawyer from Houston, who sees this as a make-or-break election issue in an article that appeared in the Los Angeles Times. "Corporate America is in charge these days. They control the White House, the Congress and the Supreme Court. But so far they do not control the right to trial by jury. That is the only place where ordinary citizens can go and have their complaints heard," Quinn said. I further quote him when he said "Ordinary people cannot hire lobbyists in Washington, but in the courtroom they get an equal chance to stand up against a corporation."

Now the Chamber of Commerce and big corporate America, spending millions of dollars in public relations campaigns, would have Members believe that the number of civil cases have risen and thus the number of frivolous lawsuits, but that is simply not the case. I would like to further quote this Los Angeles Times article which said, "The Justice Department's Bureau of Justice Statistics and the National Center for State Courts track civil trials and verdicts in the Nation's 75 largest counties. In April, the bureau reported in the last decade the number of cases have gone down, not up."

The number of general civil cases disposed of by trial in the Nation's largest counties declined from 22,451 in 1992 to 11,908 in 2001. That is a 47 percent decline. The plaintiffs won about half the time, and the overall median award was \$37,000 in 2001, down from \$65,000 in 1992.

These cases included automobile accidents, medical malpractice and product liability claims. About one-third of the cases involved contract claims which typically involve one business against each other. Mr. Speaker, we are talking about ordinary people. We are talking about people who get up every day and go to work, common folk who just earn sometimes entry-level wages. We are talking about people who could be harmed in an automobile accident or on the job working at a company that does not care about their safety, where they can lose a limb, their eyes, they could be killed. They could lose their lives.

Are we going to prevent the ability of these people to be heard and have their day in court? Big business may not want to accept liability, but it must; and we cannot live in a country where we have big business, because they

have money, come to the Congress of the United States and produce legislation that would prevent the average, little person from having their day in court and being heard by a jury.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for bringing this bill up today, and I rise in support of the legislation.

Interestingly enough, every Member who has spoken in support of the legislation today is an attorney, me included. In my private practice, I represented small businesses, businesses which employed four or five people on the average.

I recall very clearly their concerns when they came to see me and my colleagues. It was, unfortunately, the fear of lawsuits. Retail businesses today are not opening at the rate they probably should be because of fear of lawsuits. Our economic recovery has begun, but it would be moving along much more quickly but for fear of lawsuits.

We have the opportunity today to prevent many of those lawsuits, lawsuits that are frivolous. This bill will in no way effect anyone who has a legitimate lawsuit. It will only affect those who do not; those who waste money and resources, those who cause a lot of job loss. The Lawsuit Abuse Reduction Act of 2004 will provide for appropriate sanctions against frivolous lawsuits. That means it will provide for fewer frivolous lawsuits.

This bill applies to cases brought by individuals as well as by businesses both big and small, including business claims filed to harass competitors and gain market share. The bill applies to both plaintiffs and defendants if what they are filing is a frivolous action. Polls show that Americans overwhelmingly support legislation barring frivolous lawsuits.

A recent poll showed that 83 percent of likely voters believe there are too many lawsuits in America; 76 percent believe lawsuit abuse results in increased prices for goods and services; and 73 percent of Americans support requiring sanctions against attorneys who file frivolous lawsuits, and that is what this legislation does.

Frivolous lawsuits make businesses and workers suffer. This year the Nation's older ladder manufacturer, a family-owned company in New York, filed for bankruptcy protection and sold off most of its assets due to litigation costs. The company was founded in 1855, but it could not handle the cost of liability insurance which had risen from 6 percent of their sales to nearly 30 percent today, even though the company never actually lost a court judgment. The company owner said, "We could see the handwriting on the wall, and just want to end this whole thing."

Let us pass this legislation and make sure that our U.S. manufacturing sector stays strong.

□ 1330

It is our error if we fail to protect them today. Our manufacturing sector, which has been the envy of the world, finds itself mired in a slow recovery due to the cost of many lawsuits.

I encourage my colleagues to support this legislation. It has been costly to our business sector and especially costly to jobs.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. I thank the distinguished gentleman for his leadership on this issue and a number of Members who have come to the floor to express their opposition to this legislation.

Mr. Speaker, the prime place for the answer to the question of frivolous lawsuits has to be in our judicial system. I am not sure why Congress considers it necessary to interfere on a regular basis with the normal process of the court system. They have done that throughout the years of the leadership of the Republican agenda, particularly as relates to closing the door to the injured, to plaintiffs, with the representation that there are too many frivolous lawsuits.

They did it in product liability, so a child injured on the Nation's playground, their parents could not find their way into the courthouses and have the judges or juries make the decisions that are necessary on the facts that are presented.

In the bankruptcy setting, they attempted to alter the bankruptcy code so that those in the middle class would never be able to go in and file Chapter 11 as our large corporations have been able to do over the years. Why do we feel the necessity to think that we are the arbiter on frivolous lawsuits when we do not have the facts before us?

The legislation we have would reverse the changes to rule 11 of the Federal Rules of Civil Procedure that were made by the Judicial Conference in 1993 such that, one, sanctions against an attorney whose litigation tactics are determined to harass or cause unnecessary delay or cost or who has been determined to have made frivolous legal arguments or unwarranted factual assertions would become mandatory rather than discretionary to the court; two, discovery-related activity would be included within the scope of the rule; and, three, the rule would be extended to State cases affecting interstate commerce so that if a State judge decides that a case affects interstate commerce, he or she must apply rule 11 if violations are found.

This legislation strips State and Federal judges of their discretion in the area of applying rule 11 sanctions. Furthermore, it infringes on States' rights by forcing State courts to apply the rule if interstate commerce is affected. Why is the discretion of the judge not sufficient in discerning whether rule 11 sanctions should be assessed rather than having a must-apply rule imple-

mented on them by eliminating from them the ability to review the facts?

Part of the legal justice system is the eye on the facts, the presence in the courtroom, the lawyers, plaintiffs, defendants, prosecutors, defense lawyers, fact finders in the jury, the judge; not an oversight body way up here in Washington that has no knowledge of what is going on in individual court-houses.

If this legislation moves forward in this body, it will be important for us to find out its effect on indigent plaintiffs or those who must hire an attorney strictly on a contingent-fee basis. Because the application of rule 11 would be mandatory, attorneys will have to enhance their legal fees to account for the additional risk that they will have to incur in filing lawsuits and the fact that they will have no opportunity to withdraw the suit due to a mistake. Mistakes do happen.

Overall, this legislation will deter indigent plaintiffs from seeking counsel to file meritorious claims given the potential of high legal fees. This goes right in the face, if you will, of contingent fees that have been so important to those that have been injured on their job, injured in catastrophic disasters, such as issues dealing with mobility. All of those questions, individuals will now be deterred because lawyers will have this enhanced, if you will, burden that could have been handled in the courthouse.

I have not seen a dearth of judges who have had the ability and the responsibility to throw out frivolous lawsuits, fear doing so. Yet we want to sit on the high and look down the mountain and interject into the courts in Texas, Louisiana, New York, Wisconsin, Georgia and States all around the Nation and legislate what judges already do—create a fair justice system.

The "Benedict Arnold corporation" refers to a company that in bad faith takes advantage of loopholes in our Tax Code to establish bank accounts or to ship jobs abroad for the main purpose of tax avoidance. I will support this provision in the motion to recommit.

Let me simply say, in closing, Mr. Speaker, this is a bad legislative initiative. I would ask my colleagues to oppose it. Give all the decisions back to the courthouse and let us have a fair judicial system for all.

Mr. Speaker, I rise in opposition to the base bill before the Committee of the Whole, H.R. 4571, the Lawsuit Abuse Reduction Act of 2004 and state my support for the substitute as offered by the gentleman from Texas, Mr. TURNER.

As I mentioned during the Committee on the Judiciary's oversight hearing on this legislation and reiterated in my statement for the markup, one of the main functions of that body's oversight is to analyze potentially negative impact against the benefits that a legal process or piece of legislation will have on those affected. The base bill before the House today does not represent the product of careful analysis.

In the case of H.R. 4571, the Lawsuit Abuse Reduction Act, this legislation requires an overhaul in order to make it less of a misnomer—to reduce abuse rather than encourage it.

The goal of the tort reform legislation is to allow businesses to externalize, or shift, some of the cost of the injuries they cause to others. Tort law always assigns liability to the party in the best position to prevent an injury in the most reasonable and fair manner. In looking at the disparate impact that the new tort reform laws will have on ethnic minority groups, it is unconscionable that the burden will be placed on these groups—that are in the worst position to bear the liability costs.

When Congress considers pre-empting state laws, it must strike the appropriate balance between two competing values—local control and national uniformity. Local control is extremely important because we all believe, as did the Founders two centuries ago, that state governments are closer to the people and better able to assess needs and desires. National uniformity is also an important consideration, in federalism—Congress' exclusive jurisdiction over interstate commerce has allowed our economy to grow dramatically over the past 200 years.

This legislation would reverse the changes to Rule 11 of the Federal Rules of Civil Procedure (FRCP) that were made by the Judicial Conference in 1993 such that (1) sanctions against an attorney whose litigation tactics are determined to harass or cause unnecessary delay or cost or who has been determined to have made frivolous legal arguments or unwarranted factual assertions would become mandatory rather than discretionary to the court, (2) discovery-related activity would be included within the scope of the Rule, and (3) the Rule would be extended to state cases affecting interstate commerce so that if a state judge decides that a case affects interstate commerce, he or she must apply Rule 11 if violations are found.

This legislation strips state and federal judges of their discretion in the area of applying Rule 11 sanctions. Furthermore, it infringes States' rights by forcing state courts to apply the rule if interstate commerce is affected. Why is the discretion of the judge not sufficient in discerning whether Rule 11 sanctions should be assessed?

If this legislation moves forward in this body, it will be important for us to find out its effect on indigent plaintiffs or those who must hire an attorney strictly on a contingent-fee basis. Because the application of Rule 11 would be mandatory, attorneys will pad their legal fees to account for the additional risk that they will have to incur in filing lawsuits and the fact that they will have no opportunity to withdraw the suit due to a mistake. Overall, this legislation will deter indigent plaintiffs from seeking counsel to file meritorious claims given the extremely high legal fees.

Furthermore, H.R. 4571, as drafted, would allow corporations that perform sham and non-economic transactions in order to enjoy economic benefits in this country. Therefore, I planned to offer an amendment that would preclude these entities from so benefiting.

The text of the amendment defined the term "Benedict Arnold Corporation" and proposed to prevent such companies from benefiting from the legal remedies that H.R. 4571 purports to offer.

The "Benedict Arnold Corporation" refers to a company that, in bad faith, takes advantage of loopholes in our tax code to establish bank accounts or to ship jobs abroad for the main purpose of tax avoidance. A tax-exempt group that monitors corporate influence called "Citizen Works" has compiled a list of 25 Fortune 500 Corporations that have the most offshore tax-haven subsidiaries. The percentage of increase in the number of tax havens held by these corporations since 1997 ranges between 85.7 percent and 9,650 percent.

This significant increase in the number of corporate tax havens is no coincidence when we look at the benefits that can be found in doing sham business transactions. Some of these corporations are "Benedict Arnolds" because they have given up their American citizenship; however, they still conduct a substantial amount of their business in the United States and enjoy tax deductions of domestic corporations.

Such an amendment would preclude these corporations from enjoying the benefit of mandatory attorney sanctions for a Rule 11 violation. By forcing these corporate entities to fully litigate matters brought helps to put their true corporate identity into light and discourages them from performing as many domestic transactions that may be actionable for a claimant.

In the context of the Judiciary's consideration of the Terrorist Penalties Enhancement Act, H.R. 2934, my colleagues accepted an amendment that I offered that ensured that corporate felons were included in the list of individuals eligible for prosecution for committing terrorist offenses. The amendment that I would have offered for this bill has the same intent—to increase corporate accountability and to encourage corporate activity with integrity.

I ask that my colleagues support the substitute offered by Mr. TURNER and defeat the base bill. We must carefully consider the long-term implications that this bill, as drafted, will have on indigent claimants, the trial attorney community, and facilitation or corporate fraud.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in very strong support of LARA, the Lawsuit Abuse Reduction Act of 2004.

Mr. Speaker, as many of my colleagues know, during this recent August recess, I spent about 10 days in court defending myself against an alleged medical malpractice suit. I am not sure whether this fits the definition, this particular suit, of a frivolous lawsuit, but after the plaintiff's attorneys presented their evidence, over 8 days, to the jury, the trial judge ruled in favor of me and my two partners in my OB/GYN group on a directed verdict. Her decision was based on the fact that there was no evidence whatsoever presented of proximate causation.

I was willing to defend myself in that lawsuit, but a lot of physicians are not. Many times they are faced with what truly are frivolous lawsuits, and they are sometimes encouraged by their malpractice carrier, if it is determined by the carrier that the cost of defending a lawsuit even though it is frivo-

lous is more than what the settlement amount would be, then they are encouraged and oftentimes do settle. It makes the problem that much worse.

Obviously, this problem and what this law addresses is not just unique to the medical profession. There are 600,000 small business men and women in this country who are literally being put out of business because of frivolous lawsuits and, yes, further loss of jobs, which the other side wants to talk about so often and we are concerned about as well. It is time to end this nonsense of frivolous lawsuits.

As the gentlewoman from Pennsylvania said a few minutes ago, 80 percent of the American public agree with us on this issue. Let us get together, both sides of the aisle, and pass this good, commonsense legislation.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 4½ minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. I thank the gentleman for yielding me this time.

Mr. Speaker, just think for a second what is going on in the world this week.

The assault weapons ban expired yesterday, freeing the way for an assault weapons buying frenzy. The Republican Congress refuses to allow a vote on extending the ban on the sale of assault weapons.

Companies all over America continue to offshore American jobs to foreign countries with tax breaks as incentives that the Republicans refuse to take off the books.

Oil prices remain sky high, with analysts expecting them to stay sky high for the foreseeable future, but the Republicans have no plan to protect American consumers from being tipped upside down as they pay gasoline prices and home heating oil prices.

The 9/11 Commission has come back with recommendations that they insist that Congress pass to make sure there is not a repetition of 9/11. The Republican Party refuses to bring those bills out here on the floor.

Osama bin Laden is still at large, and just last week, we had a videotape from his top deputy threatening further attacks on the United States.

We have 1,000 troops who have died in Iraq. We have suffered 5,000 wounded in Iraq, and no end in sight.

North Korea may have exploded a nuclear bomb this week. South Korea is now enriching uranium and plutonium.

So what has the Republican United States Congress decided to do this week? What important issue are we debating? Will it be Iraq? Will it be terrorism? Will it be oil prices? Will it be a stagnant economy? No.

The Republicans have decided that this week, 3 weeks before we adjourn, is lawsuit abuse week, so that we can deny families in our country that have been injured by large corporations from being able to sue those corporations for the damage they did to the children, to the families. And the centerpiece is this Lawsuit Abuse Reduction Act that really should be called the Legislative Abuse Expansion Act.

This bill contains unconstitutional provisions that would force every State court to implement entirely new court rules and procedures. The bill contains unfunded mandates that would force States to conduct an inquiry about what the outcome of the case will be before discovery and trial have even taken place. How is the court supposed to know that? If a case is not lucky enough to be brought before Judge Carnac, the court may have to subpoena witnesses, hold evidentiary hearings and ask the individuals involved to the litigation proceeding to spend time and money on the new "pretrial trial" mandated by this bill to block individuals from suing corporations who have hurt American families.

The simple fact is that the amount of civil litigation in this country is not expanding. The Justice Department's Bureau of Justice Statistics and National Center for State Courts track civil cases and verdicts in the Nation's 75 largest counties. They reported in April that, in the last decade, the number of cases has gone down, not up. The bureau reported that the number of general civil cases disposed of by trial in the Nation's largest counties declined from 22,000 in 1992 to 11,000 in 2001, a 47 percent decline.

There is no urgency on this issue. There has been a 47 percent decline in these kind of cases. The plaintiffs won about half the time. And the overall median award was \$37,000 in 2001, down from \$65,000 in 1992.

Why are we taking these bills up when there is no litigation explosion? Why are we running roughshod over the rights of the States to set rules? Why are we restricting the flexibility of judges to protect ordinary families in our country?

There is only one reason why, because the Republican Party wants to shut down the access that every citizen currently has to our legal system to seek justice and compensation when they have been harmed by the actions of a wealthy corporation. That is what this is all about. Vote "no" on this legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I respect greatly the gentleman from Massachusetts (Mr. MARKEY), but when he armed his cannon, he pointed it at the wrong target. This bill has nothing to do with assault weapons or tax breaks or oil prices or the 9/11 Commission or catching Osama bin Laden or casualties in Iraq or whether the North Koreans have a nuclear weapon or not; nor does it deal with legitimate meritorious lawsuits.

What it does deal with is frivolous lawsuits, frivolous lawsuits as defined by the same Federal Rule of Civil Procedure that was on the books for 10 years, between 1983 and 1993, that 80 percent of the Federal judges when they were surveyed believed should be retained in its then current form. This bill does not restrict the access to the courts to anybody who has got a meritorious claim.

But what it does do is that it sanctions those lawyers who file frivolous lawsuits and deter them from filing frivolous lawsuits again. If we did not have sanctions against people, people would ignore the law. If there were no sanctions for driving 50 miles an hour over the speed limit or running a red light, I think it would be pretty dangerous for all of us when we went home. Because the sanctions that are currently in rule 11 have no deterrent effect against filing frivolous lawsuits, there are too many of them. We have heard about them in this debate.

What this bill does is simply go back to what happened prior to 1993, prevents forum shopping and says that, if a lawyer files repeated frivolous filings in the court three times, they are out. We have got to do that if we want to have our courts be used for the administration of justice rather than being a cover for those who wish to file frivolous papers.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. INSLEE).

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

Mr. INSLEE. Mr. Speaker, there is a fatal defect in this bill, and that fatal defect is that it would essentially refuse to give American citizens relief if they were injured by a foreign corporation's clear and palpable negligence. The defect in this bill is that, if you live in Seattle, you are hurt in Portland by a failure of a Tokyo corporation, this bill says you cannot bring a claim anywhere in the United States against a Japanese corporation that injured you unless that corporation happens to have a retail outlet in the State where you live or where the accident happened.

□ 1345

And this is a very serious matter. If one lives in Seattle, if they are injured in Portland, and the product that injures them is made in Germany or Japan or England, they are out of luck. They are now shielding out-of-U.S. corporations.

I understand the Republican Party's infatuation with outsourcing, but I do not understand why they would expose Americans and say they cannot bring a claim against somebody that makes a foreign car or foreign construction equipment that injures them.

If my colleagues think I am just sort of blowing smoke here, I want to read from the Congressional Research Service memo on this subject. It says: "However, if a defendant's principal place of business was not in the United States, then this option," meaning suing here, "could not be exercised in the United States court. Consequently, it would appear that in certain circumstances, the United States citizen or resident injured in this country would not have a judicial forum in the United States in which to seek relief."

What this bill is, is the Foreign Corporation Protection Act. And for the

life of me, I cannot figure out why they would want on the Republican side of the aisle to deny American citizens an avenue in an American court under the American judicial system some right of protection when a foreign corporation hurts them. What is the possible rationale for that?

We need to fix this or reject it.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the gentleman from Wisconsin for yielding me this time.

Mr. Speaker, let me respond to some of the concerns voiced by some of those who think they might oppose this bill. First of all, if a foreign corporation is involved, that does not prevent someone from having their day in court. The bill clearly says that it is where the plaintiff lives, and if one is a U.S. citizen, most likely they are going to live in the United States, or where the injury occurred, and the injury would have occurred in this country. So that takes care of their concerns there.

Another previous speaker from Massachusetts started off by talking about the ban on assault weapons. This bill has nothing to do with that, but we do attempt to ban frivolous lawsuits, and in that we are successful. But the gentleman from Massachusetts did make a good point, and I will embrace it entirely, and that is he acknowledged, which I thought was quite an admission, that today there are, in fact, even by his own standards, 11,000 frivolous lawsuits a year. He said they have come down. That is because of the asbestos lawsuits working their way through the various courts. Eleven thousand frivolous lawsuits filed today. I guarantee my colleagues that 99 percent of the American people think 11,000 frivolous lawsuits a year today is 11,000 frivolous lawsuits too many.

Another point I want to respond to, Mr. Speaker, was made by a gentleman who was concerned about the effect of this legislation on civil rights cases that might be filed. I want to assure him and others who might have that similar concern that if they look at section 5 of this bill, it reads: "Nothing in this bill shall be construed to bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law." The reason it says "new claims" is because claims that already exist under current law obviously are not frivolous. There is a basis in law for filing those lawsuits. So we protect anybody who might file a civil rights lawsuit in this legislation. Furthermore, if there was some concern about that, one would think that it would have been raised in the full Committee on the Judiciary consideration of this bill. It was not mentioned and no amendments were offered on that point.

Lastly, Mr. Speaker, I also want to reassure not only my colleagues but those who might be listening to this debate that this is not a bill trying to

impugn the motives of all trial lawyers. In fact, the great majority of trial lawyers serve their profession and serve Americans honorably. We are talking about a very few attorneys who, quite frankly, abuse the system, who engage in legalized extortion, who file lawsuits for no other reason than they think someone can settle out of court and they are trying to extract money from them. That is the type of abuse we seek to stop in this bill, and that is the kind of abuse we intend to.

Finally, there are many pieces of legislation considered by this body where we can see where half of the American people might benefit, half might not benefit. But in this case we have at least 99 percent of the American people on one side and just a few lawyers on the other side. And it is very rare, I think, that we would have the vast majority of the American people so clearly favoring one cause, and that is the cause of trying to reduce frivolous lawsuits.

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

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Virginia (Mr. SCOTT) has 1 minute remaining.

Mr. SCOTT of Virginia. Mr. Speaker, as it has been indicated, there is a serious question in some cases of whether or not the forum shopping is limited, one, to a situation where they cannot file anywhere. But I want to quote from a letter from several civil rights organizations. It states: "More than a decade ago civil rights organizations, including several of the undersigned organizations, worked to amend Rule 11 because the old rule unfairly discouraged meritorious civil rights claims. Nationwide surveys about the former rule found that motions for sanctions were most frequently sought and granted in civil rights cases." This bill "seeks to take us back to the changes made in 1993 to Rule 11 and force litigants to operate under the terms that we fear, like the former rule we worked so hard to amend, will be used to punish and deter valid claims of discrimination. But" this bill "goes even further. Not content with changing rules for Federal courts, the bill extends its reach to State courts," where the problem of biased judges would even be more acute.

I would point out again that there is no appeal to these cases and this does not apply to cases under existing law that many judges feel are frivolous.

Mr. Speaker, I yield back the balance of my time.

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

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 1 minute remaining.

Mr. SENSENBRENNER. Mr. Speaker, the gentleman from Texas (Mr. SMITH) clearly stated that there is an exemption in this bill on civil rights law and this bill does not apply to the development of new civil rights laws.

Further, the survey of the judges that I have referred to in the past, 95 percent of the 751 federal judges believe that the old Rule 11, which the gentleman from Virginia complains of, did not impede the development of the law. That is, 19 judges out of 20 said that the assertion that the gentleman from Virginia made was not correct in their opinion. That is why this bill is a good one and it ought to be passed.

Mr. WEXLER. Mr. Speaker, a vote for this bill is a vote for a rule—rule 11—that it had become an impediment to practicing law, not an impediment to frivolous suits as its proponents would have you think.

The bill before us today seeks to turn back the clock. Eleven years ago, Congress rewrote rule 11 to get rid of mandatory sanctions for frivolous filings because mandatory sanctions had not helped stop frivolous filings and in some cases made them worse. Why then are we going backward today? And if we are going to turn back the clock, why can't we turn back the clock to the unprecedented economic prosperity of the Clinton administration—where we had a balanced budget and a budget surplus, where we had reduced welfare roles and respect on the international stage, and where we had 100,000 new cops on the street and the lowest crime rate in decades.

If we are dead-set on turning back the clock, why must we turn it back to a system that was proven not to work? We tried mandatory sanctions for 10 years. After 10 years with mandatory sanctions, Federal courts recommended against them because they were widely abused and actually added to the wasteful litigating they were intended to prevent.

Our court system is not perfect by any stretch of the imagination. We need to meaningfully address the burden that frivolous lawsuits are placing on our courts and on our society. However, this bill does not provide any new answers; instead it takes us backward to a solution we know doesn't work.

Mr. BISHOP of Georgia. Mr. Speaker, I rise today in opposition to H.R. 4571, the misnamed "Frivolous Lawsuit Reduction Act," and in support of the Turner substitute.

Mr. Speaker, the 11,000 frivolous lawsuits filed yearly are a burden on our court system, which interfere with the administration of justice, and cost U.S. taxpayers millions of dollars each year. I fully support commonsense reform.

H.R. 4571 was drafted by and for large corporations and special interests with unlimited legal resources. It denies justice to injured Americans by limiting them from getting their day in court. That's wrong, Mr. Speaker. It does nothing to help consumers, Mr. Speaker, and targets innocent victims instead of holding responsible those who recklessly or negligently harm others.

The bill also unfairly benefits foreign corporations because it only permits a lawsuit to be filed where the corporation's principal place of business is located, making it more difficult to pursue a personal injury or product liability action against a foreign corporation in the United States. That's also wrong, Mr. Speaker, and it's not the kind of reform that America needs.

The Turner substitute is measured and tough on abuse of the system, while also protecting the rights of injured victims to receive

the compensation they deserve. In fact, the substitute's "three-strikes-and-you're-out" provisions forbid frivolous filing attorneys from bringing another suit for 10 years. For a first violation the substitute would hold the attorney in contempt. For the second violation the substitute imposes a mandatory fine. And for a third and final violation, a "third strike," you're out. That's tough, Mr. Speaker, and a commonsense approach to frivolous litigation that everyone should support.

The substitute also contains a civil rights carve-out, so that citizens who want to bring new civil rights cases can do so. It contains expedited disposition provisions to weed out junk lawsuits, enhances sanctions for document destruction, and protects injured parties and consumers. Finally, it eliminates the provision in the underlying bill that provides a windfall to foreign or "Benedict Arnold" corporations to the disadvantage of their U.S. competitors.

The Turner substitute is tough, Mr. Speaker, it's fair, and it provides real reform while preserving access to the courts for millions of Americans. I urge my colleagues to support it.

Mr. PAYNE. Mr. Speaker, I am pleased to support the Lawsuit Abuse Reduction Act, H.R. 4571, that addresses the problem of frivolous lawsuits in a constitutional manner. As an OB-GYN, I am very aware of the damage frivolous litigation is causing small businesses and medical practitioners. Frivolous lawsuits filed by unscrupulous trial lawyers can drive small businesses into bankruptcy and force doctors to abandon their medical practice. These lawsuits inflict the greatest danger on consumers who must pay more for goods and services and medical patients who cannot find needed medical services in their communities.

H.R. 4571 reduces frivolous lawsuits by exercising Congress's constitutional authority to establish rule of civil procedure for federal courts. Specifically, H.R. 4571 restores mandatory sanctions for attorneys who file frivolous lawsuits. Among other sanctions, attorneys who file frivolous lawsuits may be required to pay the other side's attorneys fees. The possibility of having to pay attorneys fees is an important factor in discouraging "nuisance" suits—lawsuits filed in the hopes of extorting cash settlements from defendants who have decided it is better to settle quickly than face the possibility of a lengthy and costly legal proceedings. This form of legal blackmail is one of the most abhorrent practices plaguing our legal system today. I am pleased to see Congress taking action to address it.

H.R. 4571 also ends the practice of forum shopping. Forum shopping is an abuse of Federal "diversity jurisdiction" that allows a trial attorney to pick a venue known for awarding large cash awards for spurious claims. All too often, a plaintiff's attorney will choose a forum that has a very tenuous or insignificant relation to the main case, but has a reputation for awarding huge victories to the plaintiff's bar. Forum shopping is especially a problem in class action suits. H.R. 4571 addresses this problem by requiring cases be filed in the Federal district or State where the plaintiff resides, the State or Federal district where the plaintiff was injured or the State or Federal district where the defendant's principal place of business is located.

Mr. Speaker, frivolous lawsuits endanger small business across the country. I am pleased to see Congress today addressing the

litigation crisis, not by attempting to nationalize tort law, but by exercising our constitutional authority over the rules of Federal civil procedure and diversity jurisdiction. I, therefore, urge all my colleagues to support H.R. 4571, the Lawsuit Abuse Reduction Act.

Mr. STARK. Mr. Speaker, I rise in opposition to the so-called Lawsuit Abuse Reduction Act, Nonprofit Athletic Organization Protection Act, and Volunteer Pilot Organization Protection Act. The Republicans are now so desperate to run against trial lawyers in this election that they have turned against our judicial system, student athletes, and countless other Americans.

Almost all volunteers, including coaches, are already protected from frivolous lawsuits by the Volunteer Protection Act of 1997, but the Republicans want to go beyond the better judgment and bipartisan consensus of 1997 in order to create an election-year issue.

Under the athletic organization act, an organization like the NCAA could violate title IX by failing to provide equal opportunities for female athletes, or court violate civil rights, anti-trust, or labor laws, and not be held accountable in court.

The 1997 Volunteer Protection Act rightly excluded volunteers who operate "a motor vehicle, vessel [or] aircraft" from legal immunity for negligence because volunteerism has to be encouraged without sacrificing the rights of injured parties. The pilot organization protection act destroys this balance by holding most pilots to one standard but allowing volunteer pilots to escape liability for negligence.

The Lawsuit Abuse Protection Act hurts all Americans by exposing them and their attorneys to motions intended to harass them and slow down the legal process, a tactic often used by wealthy defendants in civil rights trials. This is one of many reasons why the U.S. Judicial Conference, headed by Chief Justice William Rehnquist, opposes this bill. H.R. 4571 is also unconstitutional, because it forces every state court to implement new court rules and procedures, even though Congress has no jurisdiction over state courts.

Mr. Speaker, I am happy to stand up for our Constitution, judicial system, athletes, and all Americans by voting "no" on these three bills. If that makes me a friend of the trial lawyers, then I proudly stand with Thurgood Marshall, William Jennings Bryan, and Abraham Lincoln over TOM DELAY and George W. Bush.

Mr. BLUMENAUER. Mr. Speaker, H.R. 4571 is a thinly veiled attack on the trial lawyers at the expense of injured plaintiffs. By requiring mandatory sanctions that would apply to civil rights cases, H.R. 4571 will prohibit many legitimate and important civil rights actions from being filed.

No one wants frivolous abuses of our court system. There is no need to sacrifice the rights of individuals to do so. I vote in support of a substitute amendment offered by Congressman TURNER that will protect the civil rights of individuals and against H.R. 4571.

Mr. CONYERS. Mr. Speaker, I do not support this legislation because it will have a significant, adverse impact on the ability of civil rights plaintiffs to seek recourse in our courts, it will operate to benefit foreign corporate defendants at the expense of their domestic counterparts, and it will massively skew the playing field against injured victims.

This bill must be bad given the number of organizations that are opposed to it. This list

includes the United States Judicial Conference, the NAACP, Public Citizen, the Alliance for Justice, People for the American Way, the American Association of People with Disabilities, the Lawyers' Committee for Civil Rights Under Law, the American Bar Association, the National Conference on State Legislatures, National Partnership for Women, National Women's Law Center, the Center for Justice & Democracy, Consumers Union, National Association of Consumer Advocates, USAction, U.S. PIRG, and the NAACP Legal Defense Fund.

By requiring a mandatory sanctions regime that would apply to civil rights cases, H.R. 4571 will chill many legitimate and important civil rights actions. This is due to the fact that much if not most of the impetus for the 1993 changes stemmed from abuses by defendants in civil rights cases—namely that civil rights defendants were choosing to harass civil rights plaintiffs by filing a series of rule 11 motions intended to slow down and impede meritorious cases.

Although the bill states that the proposed rule 11 changes shall not be construed to "bar or impede the assertion or development of new claims or remedies under Federal, State, or local civil rights law," the language does not clearly and simply exempt civil rights and discrimination cases, as should be the case. Determining what a "new claim or remedy" is will be a daunting and complex issue for most courts and clearly does not cover all civil rights cases in any event.

Section 4, the "forum shopping" provision, would operate to provide a litigation and financial windfall to foreign corporations at the expense of their domestic competitors. This is because, instead of permitting claims to be filed wherever a corporation does business or has minimum contacts, as most state long-arm statutes provide, the bill only permits the suit to be brought where the defendant's principal place of business is located—in the case of a foreign corporation, that does not exist in the United States.

If a U.S. citizen is harmed by a product produced or manufactured by a foreign competitor, under H.R. 4571 the harmed U.S. citizen could have no recourse against a foreign corporation, whereas he or she would have recourse against a comparable U.S. corporation. This is unfair to both the U.S. citizen and all U.S. companies that compete against the foreign firm.

I urge you to vote "no" to this poorly drafted and unfair piece of legislation.

SEPTEMBER 13, 2004.

DEAR REPRESENTATIVE: We, the undersigned civil rights groups, urge you to vote against H.R. 4571 and H.R. 3369. If enacted, these bills will embolden some to unlawfully discriminate without fear of being held accountable. This legislation will turn back the progress civil rights organizations have made to achieve equal rights under the law these past decades.

Currently, Rule 11 of the Federal Rules of Civil Procedure gives judges discretion to determine whether a claim or defense is frivolous and if so, the appropriate sanctions for such a filing. H.R. 4571 would take away the judge's discretion to impose sanctions and changes Rule 11 of the Federal Rules of Civil Procedure in significant ways that will harm victims of discrimination. By removing the "safe harbor" provision that allows a party to withdraw or amend the claim or defense that an opponent argues violates Rule 11 and

making sanctions more severe and mandatory, the bill will trigger additional, contentious judicial proceedings that have little to do with the merits of the claims. Thus even civil rights plaintiffs who pursue their legitimate claims with the heightened risk of severe sanctions, may give up at the hands of litigious defendants who employ a rope-a-dope technique to simply wear out their opponents.

Our concerns about the threat to civil rights cases posted by H.R. 4571 are well founded and based on real life experience. More than a decade ago, civil rights organizations—including several of the undersigned organizations—worked to amend Rule 11 because the old rule unfairly discouraged meritorious civil rights claims. Nationwide surveys about the former rule found that motions for sanctions were most frequently sought and granted in civil rights cases. Expressing his concern about the former Rule 11, the Honorable Robert L. Carter, United States District Court Judge for the Southern District of New York, noted, "I have no doubt that the Supreme Court's opportunity to pronounce separate schools inherently unequal [in *Brown v. Board of Education*] would have been delayed for a decade had my colleagues and I been required, upon pain of potential sanctions to plead our legal theory explicitly from the start."

H.R. 4571 seeks to take back the changes made in 1993 to Rule 11 and force litigants to operate under the terms that we fear, like the former rule we worked so hard to amend, will be used to punish and deter valid claims of discrimination. But H.R. 4571 goes even further. Not content with changing the rules for federal courts, the bill extends its reach to State court cases. Upon motion, the court is required to assess the costs of the action "to the interstate economy." If the court determines that the state court action "affects interstate commerce," Rule 11 of the Federal Rules of Civil Procedure "shall apply to such action." Imagining the proceedings necessary to determine whether a particular state court action "affects interstate commerce" is mind-boggling. Moreover, the total disregard for federalism is astounding.

We also oppose H.R. 3369, the "Nonprofit Athletic Organization Protection Act." This bill gives immunity to nonprofit athletic organizations. The scope of the legislation could protect an organization that violates federal or state law by discriminating against an athlete on the basis of race, gender, disability or other protections given under federal or state law. No evidence has been presented that nonprofit athletic organizations need such protection. Coaches and other volunteers are already protected from liability under the 1997 Volunteer Protection Act.

We understand that members of Congress who oppose H.R. 3369 risk being accused of siding with "trial lawyers" over "Little Leagues," particularly this election season. But it is not the "trial lawyers" that need your protection; it is the players themselves and others who may be discriminated against and may have no recourse under this bill who need your protection. Therefore, we respectfully ask you to oppose the bill.

If you have any questions or need more information, please contact Hilary O. Shelton, Director, NAACP Washington Bureau, 202.463.2940 or Sandy Brantley, Legislative Counsel, Alliance for Justice, 202.822.6070.

Sincerely,

Alliance for Justice, American Association of People with Disabilities (AAPD), Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People (NAACP), National Partnership for Women, National Women's Law

Center, People For the American Way, USAction, U.S. Public Interest Research Group (U.S. PIRG).

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC, July 9, 2004.

Hon. F. JAMES SENSENBRENNER, JR.,
Chairman, Committee on the Judiciary, House
of Representatives, Rayburn House Office
Building, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the Judicial Conference, I write to urge you to reconsider your position on the "Lawsuit Abuse Reduction Act of 2004" (H.R. 4571). Section 2 of the bill would reinstitute a rule eliminated in 1993 upon the recommendation of the Judicial Conference, approval by the Supreme Court, and after review by Congress, because of the serious problems it engendered during a ten-year period of operation. Section 2 also would amend Rule 11 of the Federal Rules of Civil Procedure in a manner inconsistent with the longstanding Judicial Conference policy opposing direct amendment of the federal rules by legislation. Section 3 of H.R. 4571 would apply the revised federal Rule 11 to certain state court actions, while section 4 would amend the venue standards governing the filing of tort actions in both the federal and state courts: Sections 3 and 4 implicate federal-state comity interests and raise important policy and practical concerns.

SECTION 2

Section 2 would directly amend Civil Rule 11 to remove a court's discretion to impose sanctions on a frivolous filing and eliminate the rule's "safe-harbor" provisions. The bill undoes amendments to Rule 11 that took effect on December 1, 1993, and would bring back the provisions that were first introduced in 1983 and removed from the rule in 1993, after a decade of signally bad experiences with the operation and effects of the 1983 rule.

Like H.R. 4571, the 1983 version of Rule 11 required sanctions for every violation of the rule. It spawned thousands of court decisions and generated widespread criticism. The rule was abused by resourceful lawyers, and an entire "cottage industry" developed that churned tremendously wasteful satellite litigation that had everything to do with strategic gamesmanship and little to do with underlying claims. Rule 11 motions came to be met with counter motions that sought Rule 11 sanctions for making the original Rule 11 motion.

Some of the other serious problems caused by the 1983 amendments to Rule 11 included:

- (1) creating a significant incentive to file unmeritorious Rule 11 motions by providing a possibility of monetary penalty;
- (2) engendering potential conflict of interest between clients and their lawyers, who advised withdrawal of particular claims despite the clients' preference;
- (3) exacerbating tensions between lawyers; and
- (4) providing little incentive, and perhaps a distinct disincentive, to abandon or withdraw a pleading or claim—and thereby admit error—that lacked merit after determining that it no longer was supportable in law or fact.

The 1993 amendments to Rule 11 were designed to strike a fair and equitable balance between competing interests, remedy the major problems with the rule, and allow courts to focus on the merits of the underlying cases rather than on Rule 11 motions. The rule establishes a safe harbor, providing a party 21 days within which to withdraw a particular claim or defense before sanctions can be imposed. If the party fails to withdraw an allegedly frivolous claim or defense

within the 21 days, a court may impose sanctions, including assessing reasonable attorney fees. The 1983 Rule 11 authorized a court to sanction discovery-related abuse under Rule 11, Rule 26(g), or Rule 37, which created confusion. Under the 1993 amendments to Rule 11, sanctioning of discovery-related abuse was limited to Rules 26 and 37, which provide for sanctions that include awards of reasonable attorney fees.

The 1993 amendments to Rule 11 culminated a long, critical examination of the rule begun four years earlier. The Advisory Committee on Civil Rules (Advisory Committee) reviewed a significant number of empirical examinations of the 1983 Rule 11, including three separate studies conducted by the Federal Judicial Center in 1985, 1988, and 1991, a Third Circuit Task Force report on Rule 11 in 1989, and a New York State Bar Committee report in 1987. The Advisory Committee took note of several book-length analyses of Rule 11 case law.

The 1991 Federal Judicial Center survey noted that most federal judges believed that the 1983 version of Rule 11 had positive effects. But the study also noted that most judges found several other methods more effective than Rule 11 in handling such litigation and, most significantly, that about one-half of the judges reported that Rule 11 exacerbates behavior between counsel. After reviewing the literature and empirical studies of problems caused by the 1983 amendments to Rule 11, the Advisory Committee issued in 1990 a preliminary call for general comment on the operation and effect of the rule. The response was substantial, calling for a change in the rule.

The Advisory Committee concluded that the cost-shifting in Rule 11 created an incentive for too many unnecessary Rule 11 motions. Amendments to Rule 11 were drafted. The Supreme Court promulgated and transmitted the amendments to Congress in May 1993 after extensive scrutiny and debate by the bench, bar, and public in accordance with the Rules Enabling Act process (28 U.S.C. §§2071–2077).

Experience with the amended rule since 1993 has demonstrated a marked decline in Rule 11 satellite litigation without any noticeable increase in the number of frivolous filings. In June 1995, the Federal Judicial Center conducted a survey of 1,130 lawyers and 148 judges on the effects of the 1993 Rule 11 amendments. About 580 attorneys and 120 judges responded to the survey. The Center found general satisfaction with the amended rule. It also found that more than 75% of the judges and lawyers would oppose a provision that would require a court to impose a sanction when the rule is violated. A majority of the judges and lawyers, both plaintiffs' and defendants' lawyers, believed that groundless litigation was handled effectively by judges.

Undoing the 1993 Rule 11 amendments, even though no serious problem has been brought to the Judicial Conference rules committees' attention, would frustrate the purpose and intent of the Rules Enabling Act. Section 2 of H.R. 4571 would effectively reinstate the 1983 version of Rule 11 that proved so contentious and wasted so much time and energy of the bar and bench. Section 2, indeed, in some ways seems to go beyond the provisions that created serious problems with the 1983 rule. It may cause even greater mischief. Rule 11 in its present form has proven effective and should not be revised.

SECTIONS 3 AND 4

Section 3 would extend the new requirements of a mandatory Rule 11 to all state court litigation that the state court deems, on motion, to affect interstate commerce. Two features of this provision stand out.

First, it would directly regulate the practice and procedure of state courts, mandating a federal standard for the imposition of sanctions for the filing of frivolous or ungrounded complaints and other papers in state court. At present, states have been free to adopt their own rules of practice, including a version of Rule 11, if a state so chooses. Second, section 3 does not specify the actions to which it would apply. Rather, it imposes on state judges a broad generalized test to determine whether or not federal Rule 11 would apply in a given case. If enacted, this section could affect the cost and duration of a very large number of civil actions in state courts.

Section 4 seeks to prevent forum shopping by specifying the places where a plaintiff may bring a "personal injury" claim by imposing a federal standard for determining the venue of state law personal injury claims, in both state and federal court. Such a federal standard would displace existing state venue rules or statutes. It would also significantly alter the statutes in title 28, United States Code, that now govern venue (section 1391) and transfer of venue (section 1404) in the federal courts.

The Judicial Conference opposes the enactment of H.R. 4571 for the reasons stated above as to section 2. Sections 3 and 4 would make important changes in the administration of civil justice in both federal and state courts. The Judicial Conference has not had the opportunity to formally assess the advisability or impact of these sections, but notes that they may substantially affect federal-state comity interests and raise important policy and practical concerns.

The Judicial Conference greatly appreciates your consideration of its views. If you or your staff have any questions, please contact Michael W. Blommer, Assistant Director, Office of Legislative Affairs, Administrative Office of the U.S. Courts, at (202) 502-1700.

Sincerely,

LEONIDAS RALPH MECHAM,
Secretary.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
Washington, DC, September 14, 2004.

Re NAACP opposition to H.R. 4571, the so-called "Frivolous Lawsuit Reduction Act".

MEMBERS,
House of Representatives,
Washington, DC.

DEAR MEMBER OF CONGRESS: On behalf of the National Association for the Advancement of Colored People (NAACP), our nation's oldest, largest and most widely-recognized grass roots civil rights organization, I am writing to urge you, in the strongest terms possible, to oppose H.R. 4571, the so-called "Frivolous Lawsuit Reduction Act." Specifically, the NAACP is convinced that should this misguided legislation become law, it will have a serious and adverse impact on the ability to bring civil rights cases.

While the NAACP is actively opposed to strategic lawsuits against public participation (SLAPP suits), a careful review of H.R. 4571 shows clearly that this particular legislation does not address our concerns. In fact, if enacted, H.R. 4571 would embolden some to unlawfully discriminate without fear of being held accountable. H.R. 4571 would dramatically alter the operation of Rule 11 of the Federal Rules of Civil Procedure and apply the new rule to state as well as federal courts. Rule 11 prohibits attorneys from engaging in litigation tactics that harass or cause unnecessary delay or cost, or from making frivolous legal arguments or unwanted factual assertions. The current Rule

11 was adopted in 1993 in an effort to correct numerous problems resulting from amendments that had been made in 1983. Rather than curbing the problem of frivolous lawsuits, as it was intended to do, the 1983 revisions spawned thousands of court decisions and generated widespread criticism. It was abused by resourceful attorneys and resulted in wasteful satellite litigation and rising in-civility of the bar.

Furthermore, much of the impetus for the 1993 changes stemmed from abuses by defendants in civil rights cases; civil rights defendants were choosing to harass civil rights plaintiffs by filing a series of Rule 11 motions intended to slow down or impeded meritorious cases or intimidate the defendants or their attorneys. In fact, several studies determined that prior to the 1993 changes Rule 11 motions were used more frequently in civil rights cases than any other types of lawsuits.

While language nominally intended to mitigate the damage that this bill will cause to civil rights cases has been added, it is vague and simply insufficient in addressing our concerns. Even with this weak and ineffective provision, H.R. 4571 would be extremely detrimental to those of us who are forced to seek legal recourse to address discrimination in our country. Thus, I urge you again, in the strongest terms possible, to oppose H.R. 4571 and to see that it is defeated. Should you have any questions about this legislation or the NAACP opposition to it, please feel free to contact either me or Carol Kaplan on my staff at (202) 463-2940. Thank you in advance for your consideration of the NAACP position.

Sincerely,

HILARY O. SHELTON,
Director.

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, June 29, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you regarding the hearing your Committee held June 22, 2004 on H.R. 4571, legislation to make changes in Rule 11 of the Federal Rules of Civil Procedure; make an amended Rule 11 of the Federal Rules of Civil Procedure applicable to cases filed in state courts if such cases affect interstate commerce; and make changes relating to jurisdiction and venue for personal injury cases filed in state and federal courts.

The ABA opposes the provisions in the legislation that would change the Federal Rules of Civil Procedure without going through the process set forth in the Rules Enabling Act. The ABA fully supports the Rules Enabling Act process, which is based on three fundamental concepts: (1) the central role of the judiciary in initiating judicial rulemaking, (2) procedures that permit full public participation, including by the members of the legal profession, and (3) recognition of a congressional review period. We view the proposed rules changes to the Federal Rules in H.R. 4571 as a retreat from the Rules Enabling Act.

In 28 U.S.C. §§ 2072-74, Congress prescribed the appropriate procedure for the formulation and adoption of rules of evidence, practice and procedure for the federal courts. This well-settled, Congressionally-specified procedure contemplates that evidentiary and procedural rules will in the first instance be considered and drafted by committees of the United States Judicial Conference, will thereafter be subject to thorough public comment and reconsideration, will then be submitted to the United States Supreme Court for consideration and promulgation,

and will finally be transmitted to Congress, which retains the ultimate power to veto any rule before it takes effect.

This time-proven process proceeds from separation-of-powers concerns and is driven by the practical recognition that, among other things:

(1) Rules of evidence and procedure are inherently a matter of intimate concern to the judiciary, which must apply them on a daily basis;

(2) Each rule forms just one part of a complicated, interlocking whole, rendering due deliberation and public comment essential to avoid unintended consequences; and

(3) The Judicial Conference is in a unique position to draft rules with care in a setting isolated from pressures that may interfere with painstaking consideration and due deliberation.

We do not question congressional power to regulate the practice and procedure of federal courts. Congress exercised this power by delegating its rulemaking authority to the judiciary through the enactment of the Rules Enabling Act, while retaining the authority to review and amend rules prior to their taking effect. We do, however, question the wisdom of circumventing the Rules Enabling Act, as H.R. 4571 would.

We also have serious concerns about the provisions in H.R. 4571 that would impose the Federal Rules on the state courts and would impose the changes relating to jurisdiction and venue for personal injury cases filed in state and federal courts. We hope your Committee will not move on legislation containing such departures from current law until we and others have sufficient time to analyze the impact they would have on the state courts and so we will be able to present our views to you on these very important matters.

We respectfully request that this letter be made part of the permanent hearing record of June 22, 2004.

Sincerely,

ROBERT D. EVANS.

Mr. GOODLATTE. Mr. Speaker, I rise today in support of H.R. 4571, the Lawsuit Abuse Reduction Act.

Last year, I introduced legislation to address the escalating problems that accompany frivolous lawsuits, the Class Action Fairness Act. This legislation would reform the Federal rules that govern class actions so that truly interstate lawsuits would be heard in Federal courts, like the Framers envisioned. The current class action rules provide an opportunity for opportunistic lawyers to game the system and extort money from legitimate businesses.

The abuse of the class action process is just one example of how the current litigious atmosphere in our country threatens to undermine the growth and innovation that has characterized our great Nation since its founding. Frivolous lawsuits force businesses to waste time and resources that could otherwise be spent on new products, new services, or innovative procedures that could reduce the costs of goods and services for consumers.

Small businesses rank the cost and availability of liability insurance second only to the costs of health care as their top priority. Not coincidentally, both of these problems are fueled by frivolous lawsuits.

H.R. 4571 is another commonsense approach to combat frivolous lawsuits. It would restore mandatory sanctions for filing frivolous lawsuits and allow monetary sanctions, including attorney's fees and compensatory costs, against any party making a frivolous claim. H.R. 4571 would also allow sanctions for abuse of the discovery process, and would

abolish the current "free pass" provision that allows lawyers to avoid sanctions if they withdraw the frivolous claim within 21 days after a motion for sanctions has been filed.

By restoring strong penalties against those that file frivolous claims, the Lawsuit Abuse Reduction Act will give businesses the freedom to devote their resources to doing business, rather than wasting their resources defending frivolous litigation.

I urge my colleagues to support this important legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

AMENDMENT IN THE NATURE OF A SUBSTITUTE
OFFERED BY MR. TURNER OF TEXAS

Mr. TURNER of Texas. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. TURNER of Texas:

Strike all after the enacting clause and insert the following:

SEC. 1. "THREE STRIKES AND YOU'RE OUT" FOR FRIVOLOUS PLEADINGS.

(a) SIGNATURE REQUIRED.—Every pleading, written motion, and other paper in any action shall be signed by at least 1 attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) CERTIFICATE OF MERIT.—By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are reasonable based on a lack of information or belief.

(c) MANDATORY SANCTIONS.—

(1) FIRST VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated, the court shall find each attorney or party in violation in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon the person in violation, or upon both such person and such person's attorney or client (as the case may be).

(2) SECOND VIOLATION.—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made

has committed one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) **THIRD AND SUBSEQUENT VIOLATIONS.**—If, after notice and a reasonable opportunity to respond, a court, upon motion or upon its own initiative, determines that subsection (b) has been violated and that the attorney or party with respect to which the determination was made has committed more than one previous violation of subsection (b) before this or any other court, the court shall find each such attorney or party in contempt of court, refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings, require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney, or client (as the case may be)) to pay a monetary fine. The court may also impose additional appropriate sanctions, such as striking the pleadings, dismissing the suit, and sanctions plus interest, upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(4) **APPEAL; STAY.**—An attorney has the right to appeal a sanction under this subsection. While such an appeal is pending, the sanction shall be stayed.

(5) **NOT APPLICABLE TO CIVIL RIGHTS CLAIMS.**—Notwithstanding subsection (d), this subsection does not apply to an action or claim arising out of Federal, State, or local civil rights law or any other Federal, State, or local law providing protection from discrimination.

(d) **APPLICABILITY.**—Except as provided in subsection (c)(5), this section applies to any paper filed on or after the date of the enactment of this Act in—

- (1) any action in Federal court; and
- (2) any action in State court, if the court, upon motion or upon its own initiative, determines that the action affects interstate commerce.

SEC. 2. "THREE STRIKES AND YOU'RE OUT" FOR FRIVOLOUS CONDUCT DURING DISCOVERY.

(a) **SIGNATURES REQUIRED ON DISCLOSURES.**—Every disclosure made pursuant to subdivision (a)(1) or subdivision (a)(3) of Rule 26 of the Federal Rules of Civil Procedure or any comparable State rule shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) **SIGNATURES REQUIRED ON DISCOVERY.**—

(1) **IN GENERAL.**—Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable

inquiry, the request, response, or objection is:

(A) consistent with the applicable rules of civil procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(2) **STRICKEN.**—If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(c) **MANDATORY SANCTIONS.**—

(1) **FIRST VIOLATION.**—If without substantial justification a certification is made in violation of this section, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court and shall require the payment of costs and attorneys fees. The court may also impose additional sanctions, such as imposing sanctions plus interest or imposing a fine upon the person in violation, or upon such person and such person's attorney or client (as the case may be).

(2) **SECOND VIOLATION.**—If without substantial justification a certification is made in violation of this section and that the attorney or party with respect to which the determination is made has committed one previous violation of this section before this or any other court, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court and shall require the payment of costs and attorneys fees, and require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine. The court may also impose additional sanctions upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(3) **THIRD AND SUBSEQUENT VIOLATIONS.**—If without substantial justification a certification is made in violation of this section and that the attorney or party with respect to which the determination is made has committed more than one previous violation of this section before this or any other court, the court, upon motion or upon its own initiative, shall find each attorney or party in contempt of court, shall require the payment of costs and attorneys fees, require such person in violation (or both such person and such person's attorney or client (as the case may be)) to pay a monetary fine, and refer such attorney to one or more appropriate State bar associations for disciplinary proceedings. The court may also impose additional sanctions upon such person in violation, or upon both such person and such person's attorney or client (as the case may be).

(4) **APPEAL; STAY.**—An attorney has the right to appeal a sanction under this subsection. While such an appeal is pending, the sanction shall be stayed.

(d) **APPLICABILITY.**—This section applies to any paper filed on or after the date of the enactment of this Act in—

- (1) any action in Federal court; and
- (2) any action in State court, if the court, upon motion or upon its own initiative, determines that the action affects interstate commerce.

SEC. 3. BAN ON CONCEALMENT OF UNLAWFUL CONDUCT.

(a) **IN GENERAL.**—A court may not order that a court record be sealed or subjected to a protective order, or that access to that record be otherwise restricted, unless the court makes a finding of fact in writing that identifies the interest that justifies the order and that determines that the order is no broader than necessary to protect that interest.

(b) **APPLICABILITY.**—This section applies to any court record, including a record obtained through discovery, whether or not formally filed with the court.

SEC. 4. ENHANCED SANCTIONS FOR DOCUMENT DESTRUCTION.

(a) **IN GENERAL.**—Whoever influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, a pending court proceeding through the intentional destruction of documents sought in, and highly relevant to, that proceeding—

(1) shall be punished with mandatory civil sanctions of a degree commensurate with the civil sanctions available under Rule 37 of the Federal Rules of Civil Procedure, in addition to any other civil sanctions that otherwise apply; and

(2) shall be held in contempt of court and, if an attorney, referred to one or more appropriate State bar associations for disciplinary proceedings.

(b) **APPLICABILITY.**—This section applies to any court proceeding in any Federal or State court.

SEC. 5. EXPEDITED DISPOSITION OF FRIVOLOUS AND OTHER LAWSUITS.

(a) **IN GENERAL.**—For each State, each judicial district in the State shall, within 2 years of the date of the enactment of this Act, develop and implement a civil justice expense and delay reduction plan and submit it to the appropriate governing body of the State. The governing body shall make the plan available to the public.

(b) **PRINCIPLES.**—Each plan required by subsection (a) shall apply to actions in State court that affect interstate commerce and any other actions that the governing body considers appropriate. The plan shall be developed and implemented with regard to the following principles:

(1) Systematic, differential treatment of civil cases that tailors the level of individualized and case specific management to such criteria as case complexity, the amount of time reasonably needed to prepare the case for trial, and the judicial and other resources required and available for the preparation and disposition of the case.

(2) Early and ongoing control of the pre-trial process through involvement of a judicial officer in—

(A) assessing and planning the progress of a case;

(B) setting early, firm trial dates, such that the trial is scheduled to occur within eighteen months after the filing of the complaint, unless a judicial officer certifies that—

(i) the demands of the case and its complexity make such a trial date incompatible with serving the ends of justice; or

(ii) the trial cannot reasonably be held within such time because of the complexity of the case or the number or complexity of pending criminal cases;

(C) controlling the extent of discovery and the time for completion of discovery, and ensuring compliance with appropriate requested discovery in a timely fashion; and

(D) setting, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

(3) For all cases that the court or an individual judicial officer determines are complex and any other appropriate cases, careful

and deliberate monitoring through a discovery-case management conference or a series of such conferences at which the presiding judicial officer—

(A) explores the parties' receptivity to, and the propriety of, settlement or proceeding with the litigation;

(B) identifies or formulates the principal issues in contention and, in appropriate cases, provides for the staged resolution or bifurcation of issues for trial consistent with Rule 42(b) of the Federal Rules of Civil Procedure;

(C) prepares a discovery schedule and plan consistent with any presumptive time limits that a district court may set for the completion of discovery and with any procedures a district court may develop to—

(i) identify and limit the volume of discovery available to avoid unnecessary or unduly burdensome or expensive discovery; and
(ii) phase discovery into two or more stages; and

(D) sets, at the earliest practicable time, deadlines for filing motions and a time framework for their disposition.

(4) Encouragement of cost-effective discovery through voluntary exchange of information among litigants and their attorneys and through the use of cooperative discovery devices.

(5) Conservation of judicial resources by prohibiting the consideration of discovery motions unless accompanied by a certification that the moving party has made a reasonable and good faith effort to reach agreement with opposing counsel on the matters set forth in the motion.

(6) Authorization to refer appropriate cases to alternative dispute resolution programs that—

(A) have been designated for use in a district court; or

(B) the court may make available, including mediation, minitrial, and summary jury trial.

(c) **TECHNIQUES.**—In developing the plan required by subsection (a), a judicial district shall consider and may include the following techniques:

(1) A requirement that counsel for each party to a case jointly present a discovery-case management plan for the case at the initial pretrial conference, or explain the reasons for their failure to do so.

(2) A requirement that each party be represented at each pretrial conference by an attorney who has the authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.

(3) A requirement that all requests for extensions of deadlines for completion of discovery or for postponement of the trial be signed by the attorney and the party making the request.

(4) A neutral evaluation program for the presentation of the legal and factual basis of a case to a neutral court representative selected by the court at a nonbinding conference conducted early in the litigation.

(5) A requirement that, upon notice by the court, representatives of the parties with authority to bind them in settlement discussions be present or available by telephone during any settlement conference.

(6) Such other features as the judicial district considers appropriate.

The SPEAKER pro tempore. Pursuant to House Resolution 766, the gentleman from Texas (Mr. TURNER) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 20 minutes.

Mr. TURNER of Texas. Mr. Speaker, I yield myself such time as I may consume.

I offered a substitute, which I believe is much stronger in preventing frivolous lawsuits than the bill offered to the House. In addition, it preserves the right that was mentioned earlier to sue a foreign corporation, which is jeopardized in the bill offered before us.

The Republican bill also weakens our civil rights laws by having a chilling effect upon suits relating to civil rights, and our substitute carves out an exception for civil rights litigation. But, most importantly, it does not eliminate the possibility that one may be unable to sue a foreign corporation in the United States.

First of all, our bill strengthens the provisions against frivolous lawsuits. Members on both sides of the aisle uniformly, unanimously agree that our laws and our rules of procedure must prohibit frivolous lawsuits. Our bill imposes a mandatory "three strikes and you're out" provision on frivolous pleadings and discovery violations. Thus, it is far more stringent than the Republican bill, which merely subjects these violations to mandatory payment of cost and fees. More importantly, our bill includes clear and specific civil rights carve outs so there will not be a chilling effect on these actions. We also amend the United States Code so that the change is not subject to future changes and modifications by the courts as the Republican bill would be.

Second, our bill limits the ability of corporate wrongdoers to conceal any conduct harmful to the public welfare by requiring that court records may not be sealed unless the court first enters a finding that such sealing is justified. This provision will help ensure that information on dangerous products and actions is made available to the public. A nearly identical provision passed by voice vote in the 107th Congress with the support of the gentleman from Wisconsin (Chairman SENSENBRENNER). The Republican bill does not contain this very important protection.

Third, we provide that parties which destroy documents in connections with civil proceedings shall be punished with mandatory civil sanctions, held in contempt of court, and referred to the State bar for disciplinary proceedings. Again, this is far tougher than the Republican bill, which does not provide for contempt of court and disciplinary proceedings.

And, fourth, we specify that the Civil Justice Reform Act, which has been so successful in the Federal courts, be applied to all courts in order to speed up the pretrial process and to weed out junk lawsuits.

And, finally, unlike the Republican bill, our substitute does not have this new rule of jurisdiction that operates to make it impossible to sue a foreign corporation in this country and, further, by the absence of such provision, promotes corporations in our own country continuing this despicable process of relocating their headquarters overseas in order to avoid U.S.

taxes, and now they will do so to avoid being sued. There is no reason to give these companies a windfall profit, windfall gain, at the expense of corporations who do the right thing and stay here at home.

This is a common sense substitute. It cracks down on frivolous lawsuits even more forcefully than the Republican bill. It preserves our antitrust laws and our ability to obtain justice against foreign corporations. It is a better bill, a stronger bill, and one that we would urge this House to substitute for the bill offered by our Republican colleagues.

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

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

Mr. Speaker, I rise in strong opposition to this substitute amendment which guts the bill.

Where to begin? I will begin with the title of the first section of the substitute. It is entitled "Three Strikes and You're Out." But it is not true when we read the substitute. In fact, the substitute provides that following three violations of this provision, the court "shall refer each such attorney to one or more appropriate State bar associations for disciplinary proceedings." Three strikes and you are still in.

The Democratic substitute does not say that the attorney shall be suspended from the practice of law. That is what the base bill says. The bill says that after three strikes "The Federal District court shall suspend that attorney from the practice of law in that Federal District Court."

The base bill follows through on its "three strikes and you're out" promise. The Democratic substitute says "three strikes and you have a foul ball."

But it gets worse. Not only are the filers of frivolous lawsuits not out after three strikes under the Democratic substitute, but the Democratic substitute even changes what a strike is under existing law. Currently Rule 11 contains four criteria that can lead to a Rule 11 violation. The Democratic substitute references only three, kind of like shrinking the strike zone.

Currently, Rule 11 allows sanctions against frivolous filers whose denials of factual contentions are not "warranted on the evidence" or are not "reasonably based on the lack of information and belief." The Democratic substitute removes this protection from the victims of frivolous lawsuits under existing law. The Democratic substitute for the first time without penalty allows defendants to file papers with the court that include factual denials of allegations against them that are not warranted by the evidence and not reasonably based. In other words, misleading and unfactual filings end up getting a get-out-of-jail-free card under the Democratic substitute.

□ 1400

Instead, the substitute provides additional protection for defendants filing frivolous defenses that are not warranted by the evidence and not reasonably based. This is a step backward for victims of frivolous lawsuits under both State and Federal law.

Further, the base bill provides that those who file frivolous lawsuits can be made to pay all of the costs and attorneys' fees that are "incurred as a direct result of filing of the pleading, motion, or other paper, that is the subject of the violation." The Democratic substitute does not include that critical language, which is necessary to make clear that those filing frivolous lawsuits must be made to pay the full costs imposed on their victim by the frivolous lawsuit.

The Democrat substitute also imposes complicated mandates on each State's judicial districts, requiring them to "develop and implement a civil justice expense and delay reduction plan." The Democratic substitute requires States to implement these mandates under exceedingly complex requirements that span all the way from pages 10 to page 15 of the Democratic substitute and requires things like "systematic, differential treatment of civil cases that tailors the level of individualized and case specific management," whatever that means. At a minimum, this is overly burdensome, and may be unconstitutional.

The Democratic substitute requires that States "develop and implement" these plans when the Supreme Court has held that "Congress may not simply commandeer the States by directly compelling them to enact and enforce a Federal regulatory program." That is in *New York v. The United States* 1992. That is exactly what the Democratic substitute does without any justification under the Commerce Clause of the Constitution.

The Democratic substitute also completely overrides State laws regarding the sealing of records in all cases, including proceedings in which State laws protect the privacy of sexual abuse victims, including children. And let me repeat this: if the Democratic substitute passes and becomes law, State laws relative to the sealing of court records on sexual abuse cases, including those against minors, can be open to public scrutiny. Shame on you. This blunderbuss provision in the Democratic substitute covers State divorce proceedings, and even all criminal cases, without a showing of why State procedures are inadequate.

The Democratic substitute also retains rule 11's current "free pass" provision, which allows lawyers to avoid sanctions for making frivolous claims simply by withdrawing those claims within 21 days after a motion for sanctions has been filed.

Now, let us look at that. A frivolous claim or frivolous filing has been made. You have 21 days after you make it to withdraw it. But meantime, the oppo-

site party has got to go to the legal expense to make the motion to the court to show that the claim is frivolous. And who ends up paying the bill on that? Not the lawyer who filed the frivolous claim, but the defendant and the defendant's lawyers; and that provision actually encourages frivolous lawsuits by allowing unlimited numbers of frivolous pleadings to be filed without penalty. Talk about a loophole big enough to drive the Queen Mary through, that is it.

The Democratic substitute also does not include the bill's essential provisions to prevent the unfair practice of forum shopping.

In short, the Democratic substitute does not provide for three strikes and you are out. It provides for three strikes and you get referred to the State Bar Association that can continue to let the offending attorney practice law. The Democratic substitute even weakens existing law that protects plaintiffs from defendants that file frivolous denials that are not warranted by the evidence and are not reasonably based. The substitute also fails to provide that attorneys' fees be awarded to cover the full costs of responding to a frivolous lawsuit, and the substitute also burdens the States by directly compelling them to enact and enforce a Federal regulatory program. It overrides State procedures governing the confidentiality of documents in the course of legal proceedings. That is more than three strikes against the Democratic substitute, and it should be soundly defeated.

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

Mr. TURNER of Texas. Mr. Speaker, I yield myself such time as I may consume.

I would remind the distinguished chairman that careful reading of our bill would reveal to him there is no safe harbor allowing any period of days, 21 or otherwise, to withdraw pleadings that may be frivolous. What we have done in our bill is we have amended the statute. We have provided a new statute against frivolous lawsuits; we do not disturb rule 11. We urge him to take a closer look at the bill and what we propose.

I would also suggest to the distinguished chairman that the provision in our bill to protect the public against automatic sealing of certain court records which may be important and contain important information that should be available to the public to protect the public against things like defective products and other things, the decision to seal is one that is in the hands of the court and the sealing must be justified clearly. In the cases of sexual abuse, that sealing is justified. I do not know any judge in the land that would not understand that. And, certainly, I do not see any judge taking the language that we have offered and overturning any State law or issuing any ruling contrary to State law that would not result in the sealing of sexual abuse cases.

The major principal defect in the Republican bill relates to the fact that you are unable to sue a foreign corporation because they attempt to change the law as it presently exists and to make the provision require that you file against a corporation where their principal place of business is. There are many foreign corporations that may be in the United States that do not have their principal place of business here; it is overseas. So the language that has been offered has the effect of denying a plaintiff with a genuine injury, not a frivolous lawsuit, but a genuine, valid lawsuit from being able to sue a foreign corporation.

That provision, perhaps the Republican drafters of their bill did not understand what they were doing with the language they offered, but that is the effect of it; and I think anyone who votes for the Republican bill and says that we are denying an American citizen the opportunity with a legitimate claim to file a suit in the United States against a foreign corporation is casting a vote they will regret.

I also think it is important to point out that the sanctions that are provided in the Democratic substitute are stronger than the provisions in the Republican bill. It is also, I think, important to point out that our sanctions apply to State courts where interstate commerce is involved. Your "three strikes and you are out" provision does not apply in State courts, perhaps, again, by drafting error; but it does not apply.

So we think it is very critical that this bill be the one the House adopts.

Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I thank the gentleman for yielding me this time. It frequently falls upon me as a nonlawyer on the Committee on the Judiciary to try to sort through the facts of these things and try to reduce them into small words that those of us who are nonlawyers can understand. But I was taken by one fact that was articulated by one of my colleagues on the other side that according to a recent survey, 80 percent of the American people are against frivolous lawsuits. I would love to know who the 20 percent are that like frivolous lawsuits so that we can have a focus group with them. They are probably lawyers of some sort, I would imagine.

First, let me just say we rarely have an opportunity to take a look at a proposal before us today and look at almost an identical proposal that was the law of the land between 1983 and 1993. Then, too, there was an effort to unplug the courts of frivolous lawsuits; then, too, the Judicial Conference, not this body, the Judicial Conference said we have to try to come up with some rules.

What was the effect? The effect was not reducing the amount of frivolous lawsuits; it was adding a whole new level of litigation around frivolous lawsuits. Rather than simply having a

judge say, that is frivolous, it is out of here, let us move on with the case, you then had suits and countersuits over whether or not something was frivolous, because it was elevated with the changes that were made in that decade.

We also found that an unintended consequence, and I think even my colleagues acknowledge that it was unintended by their effort, albeit insubstantial, to carve out civil rights suits, we found that when you were bringing a novel, new kind of suit, you found yourself being charged with making a frivolous lawsuit. Civil rights cases is just one of them. We also saw the same thing could have or did happen when you sued tobacco companies to recover for States.

And today, I would dare say that someone who brought a case that is being brought in New York today, suing the country of Saudi Arabia for their culpability in the September 11 attacks, someone could come before a judge and say this is a frivolous lawsuit because it represents no precedent, it has never been tried before and, therefore, should be dismissed.

Obviously, it did not have that effect in that 10 years of clearing out the docket of frivolous lawsuits. If anything, it increased them.

Secondly, we have heard frequently the matrix drawn between frivolous lawsuits, increase of litigation, and insurance rates. I looked at the bill fairly carefully. Nowhere does it require that insurance rates go down, so I will have to assume the same thing will happen upon passage of this bill, although the passage will not happen, because the other body will never take up such a bill, that you will put in the restrictions of average Americans getting into court and then, lo and behold, insurance rates keep going up and up and up, because that is what happened in California, and that is what happened in Florida. So if my colleagues think that by voting for this bill they will be reducing insurance rates, nothing could be further from the truth.

There has been some back-and-forth about this notion of venue shopping: you can only bring an action in the defendant's, not the person who is bringing the case, the defendant's principal place of business. Well, again, I have very talented lawyers on both sides of this, but the Congressional Research Service, the American Law Division, hardly a pantheon of partisanship, hardly the place to go to get the talking points for Fox News or for whoever guys think lies, they write, "If a defendant's principal place of business was not the United States, then this option could not be exercised in a United States court. Consequently, it would appear that in certain circumstances, a United States citizen or resident injured in this country would not have a judicial forum in the United States in which to seek relief."

That is what a relatively unbiased analysis of this thing looks like; but even if it is not, what problem are you

trying to solve? You should allow Americans to take their cases where they are most appropriate, not where you believe it should be.

Now, let me conclude with this thought. I heard a couple of times on the campaign trail President Bush talked about not having a Washington-based, one-size-fits-all solution for our Nation's problems. There is another way to do this. There is another way. There is a way to look at cases that have individual facts, have individual people, take them before an individual, say a judge; or take those cases before a group of individuals, say six or nine or 12 individual Americans from their community, and allow them to vet the different sides of the argument and allow that to be the decision-making process. It is called the American justice system, and as contemptuous as my colleagues on the other side of the aisle are that you could actually have a judge that has the common sense to make a decision or a jury that has the common sense to make a decision, or whether you can possibly have two lawyers in the adversarial proceeding get the truth out, we here in Washington have to say, this one size fits all.

Well, fortunately, this one size will only be in this one House and will never be the law of this one land.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the chairman for yielding me this time.

Mr. Speaker, anyone who is worried about what frivolous lawsuits will do to them, their family, their friends, or their businesses ought to rush to oppose this Democratic substitute amendment. That is because it is an amendment that will do very little to prevent frivolous lawsuits.

The underlying bill makes several key changes that will deter lawyers from filing frivolous lawsuits. The substitute amendment before us strips all these away.

First, this legislation, the underlying legislation, allows the court to require an individual who files a frivolous lawsuit to pay attorneys' fees incurred as a result of the frivolous lawsuit. This provision obviously makes attorneys think twice before they file such a frivolous lawsuit. However, the Democratic substitute amendment does not include this key provision. In other words, there is no disincentive to file a frivolous lawsuit.

This also means that under the Democratic substitute, small business owners would still suffer from the cost of frivolous lawsuits. Individuals would still suffer because they would see their insurance premiums go up. They would see their health care costs rise. They would still see their reputations damaged, all because of wrongfully filed, frivolous lawsuits.

In other words, Mr. Speaker, this substitute amendment does not provide

any relief to those who would get unfairly slapped with a frivolous lawsuit. Those victims would still have to pay their own legal fees.

Next, this substitute claims to have a "three strikes and you are out" provision. But if you look at it closely, as the chairman mentioned a while ago, there are no real consequences for the attorney who repeatedly files frivolous lawsuits.

□ 1415

Instead, the substitute merely requires a court to refer the offending attorney to his State bar association; and you can imagine that means that nothing is going to happen.

By contrast, the base bill requires that attorneys who fill frivolous claims face real consequence. Those attorneys can be barred from practicing in that Federal court for a year. That is a real disincentive to file frivolous lawsuits.

Also, the Democratic substitute we are considering now places heavy mandates on States. It requires a new regulatory scheme to deal with "civil justice expense and delay" issues. Mr. Speaker, I think that is a very nice but meaningless euphemism for frivolous lawsuits. The requirements would create a new bureaucratic nightmare instead of dealing with the real problem, which is of course frivolous lawsuits.

Finally, Mr. Speaker, the substitute amendment does nothing to address the problem of forum shopping and that is at least half the problem. We simply cannot continue to allow trial attorneys to flock to counties that will award unreasonably high verdicts to any plaintiff who walks in the door. This does too much damage to many Americans and it is, quite frankly, time to put a stop to this type of abuse.

Mr. Speaker, I urge my colleagues to oppose to substitute amendment and vote yes on the underlying bill which would deter lawsuit abuse.

Mr. TURNER of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, there is a significant difference in the civil rights exemption in the underlying bill and this amendment. This amendment is vastly superior because it exempts all civil rights cases, not just those cases that are based on new or evolving law. Many of the cases brought under present laws are treated with hostility. Civil rights cases are often unpopular and some judges do not like to see them.

In fact, the Alliance For Justice had a report on Judge Pickering's hearing and said, "At his hearing, Judge Pickering was asked about his record of strongly favoring defendants in employment cases. Incredibly, Judge Pickering defended his record by opining that almost no employment discrimination cases that come before the Federal courts have merit."

Obviously, the problem is made worse when you expand the possibility to State courts, where local judges in some areas may have a civil bias. That is why the civil rights lawyers oppose the underlying bill because they do not want those kind of judges empowered to essentially allow mandatory sanctions to prevent those kind of cases from being brought in the first place.

I would hope that we would adopt the language in the substitute, but we should defeat the bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. KELLER).

Mr. KELLER. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for yielding me time.

I rise today in opposition to the Democratic substitute and I will address the three or four strikes and you are out provision of the Democratic substitute. I would like to begin by pointing out what the Democratic White House hopefuls have said about this issue.

Senator JOHN EDWARDS published an article in Newsweek Magazine on December 15, 2003, where he says, "Frivolous lawsuits waste good people's time and hurt the real victims. Lawyers who bring frivolous cases should face tough mandatory sanctions with a three strikes penalty."

He also told the Washington Post on May 20, 2003, "We need to prevent and punish frivolous lawsuits. Lawyers who file frivolous lawsuits should face tough mandatory sanctions. Lawyers who file three frivolous cases should be forbidden to bring another suit for the next 10 years. In other words, three strikes and you are out."

That is not what the Democratic substitute says. The Democratic substitute only provides that on three strikes the offending attorney will be referred to a bar association and no action need be taken by the bar to discipline the attorney under the substitute. That is not what Senator EDWARDS said. Senator EDWARDS did not say, three strikes and we are going to put a letter in your personnel file. He did not say, three strikes and we will send a diplomat from the U.N. to talk to you. He did not say, three strikes and we will refer this matter to a State bar association where they will not be required to take any disciplinary action.

Could it be that when it comes to cracking down on frivolous lawsuits with a tough three strikes and you are out penalty that the White House presidential candidate were for it before they were against it? Could this be an example of flip-flopping? Do we really have, in fact, two Americas, one America where we see very tough campaign rhetoric about cracking down with mandatory sanctions and a three strikes and you are out penalty and another America where we see watered-down liberal legislation on the floor of Congress?

I think there should be one America, one America where we prevent and

punish frivolous lawsuits, not just with words but with actions. I urge my colleagues to vote no on this Democrat substitute.

Mr. TURNER of Texas. Mr. Speaker, how much time remains on each side?

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Texas (Mr. TURNER) has 6 minutes remaining. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 7½ minutes remaining.

Mr. TURNER of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from Washington (Mr. INSLEE).

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

Mr. INSLEE. Mr. Speaker, we do have an honest debate and an honest difference of opinion between the two parties here and it is rather stark.

Democrats believe that if a Japanese car manufactured in Japan, the brakes fail and injured you or your family and it is through negligence of the manufacturer, you ought to be able to have redress in an American court.

The Republicans want to outsource that to the Japanese courts and make you fly to Tokyo to file your lawsuit.

If a German car blows up and burns you and your family to a crisp, Democrats believe you ought to be able to go to the American judicial system and have relief. Republicans believe you should outsource your claims to the German courts. But it gets worse than that.

If a French car fails and injures your family, Democrats believe you should go to an American court and get American justice. Republicans believe you can outsource that even to the French. We do not even have french fries in our cafeteria any more, but you would be happy to send Americans to the French judicial system.

Now, the gentleman from Texas (Mr. SMITH) took issue with what I was saying about this claim, and I want to explain to you why this is.

First, I want to tell you that the Congressional Research Service, the bipartisan, nonpartisan referee of these matters, agrees with exactly what I have said when they said, "Consequently it would appear that in certain circumstances a United States citizen or resident injured in this country would not have a judicial forum in the United States in which to seek relief."

The jury is closed and out. The verdict is in. Your policies have outsourced a lot of jobs, but we do not understand why you want to outsource judicial activity for American citizens. Now, why is that?

It is because there is an error apparently in drafting. I do not know if you really intended this but this is what you accomplished, and the reason is even though the statute, and excuse me if I am technical for a moment but this is an important issue. It is Americans' judicial rights. Even where the statute suggests on its face that it would allow an American to sue in any one of three

places, where you live or where you are hurt or where the principal place of the business is that hurt you, there is a constitutional principle that says if that corporation does not have a minimal contact where you live or where the injury occurs you cannot sue under the United States Constitution in either one of those circumstances.

That is why the Congressional Research Service, the bipartisan or nonpartisan Congressional Research Service, has concluded that the Republican bill wants to outsource our judicial system to the German, French and Japanese judicial systems. That makes no sense whatsoever, and, frankly, I would invite a response to this as to why you would want to do that.

The Japanese, they build some okay cars, not as good as American cars of course, but their judicial system is not one that we should have to be exposed to in America. Americans should have access to the American judicial system. We should pass this substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, we have debated this issue extensively and the venue for these types of personal injury cases are, one, the district where the plaintiff resides; two, the district where the injury occurred; or three, where the principal place of business of the defendant is located. Any one of these three criteria would trigger the venue.

Now, it is elemental under the corporation law of all 50 States that if a corporation that is incorporated elsewhere and that includes in any one of the other 49 States or in a foreign country, wants to do business in a State, it has to get a certificate of authority and appoint an agent for the service of process. And that is what is done with practically every multinational corporation or interstate corporation that does bills in the United States.

If they do not do that, then they do not have limited liability protection of the corporation law that applies. So the entire argument that is made by the gentleman from Washington (Mr. INSLEE) and the gentleman from Texas (Mr. TURNER) is a complete red herring.

Now, the two gentlemen have quoted extensively from a Congressional Research Service memorandum that was dated today. And it begins, "This rushed memorandum discusses this issue." Well, the CRS is wrong upon occasion. And in yesterday's extension of remarks in the CONGRESSIONAL RECORD, I inserted into the RECORD correspondence that indicated that a similar rushed memorandum of the Congressional Research Service on the Marriage Protection Act was erroneous in nature. Wrong once, maybe wrong again.

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

Mr. TURNER of Texas. Mr. Speaker, I yield 30 seconds to the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Speaker, I have tremendous respect for the chairman but

in this case the Congressional Research Service is right. Here is where they are right. It is a constitutional principle that a court in Washington, for instance, does not have jurisdiction over a Japanese corporation if they do not have minimal contact with Washington; for instance, if they do not have a retail outlet in Washington. So if a Washington resident is injured by a Japanese car, and they have got an enormous retail outlet down in California but their principal place of business, which is the language you chose in this statute, is in Tokyo, you are out of luck as an American. And I am betting on CRS on this one.

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

Mr. SENSENBRENNER. Mr. Speaker, I am prepared to close if the gentleman from Texas will yield back.

Mr. TURNER of Texas. Mr. Speaker, do I close or does the chairman close?

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. SENSENBRENNER) has the right to close.

Mr. TURNER of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me say the language regarding the establishment of the forum is very clear in the Republican bill as the gentleman from Washington (Mr. INSLEE) pointed out. It says the suit should be filed where the defendant has its principal place of business.

Now, the distinguished chairman says, well, the law has established that you can sue where somebody is registered to do business and all these foreign corporations have to register to do business.

That is not what the language offered in the Republican bill says. It does not say you can sue a foreign corporation in States where it is registered to do business. It says where its principal place of business is located, and many foreign corporations have no principal place.

I would suggest to the gentleman who offered up the quote of Senator EDWARDS, we agree with Senator EDWARDS. We should ban frivolous lawsuits, and the bill that we have offered does it more forcefully and effectively than the Republican bill does. At the end of the third strike under the Republican bill you can be barred in practicing law in that court. You are suspended. Under our bill, the third strike, you are referred to your State bar association for disciplinary proceedings, to include possible disbarment.

Now, under your bill a lawyer from New York can come down to east Texas and file a lawsuit and if it is frivolous then he gets barred from ever practicing law in the Eastern District of Texas again.

What good is that going to do for a New York lawyer who may never come back to east Texas anyway? What good will it do to say you cannot come to east Texas? Even if he has to come back he can send a law partner and let him file the frivolous lawsuit again.

If you want to get a lawyer's attention, you refer them to the State disciplinary board that governs their right to practice law in that State.

□ 1430

I practiced law for many years, and anytime a lawyer gets referred to the State bar association for disciplinary action, it is a serious thing. If a lawyer continues to file frivolous lawsuits, they should be disbarred; and then we would not have to worry about them running to another court to file another frivolous lawsuit where they had not already filed one before. They would not be practicing law.

So I would suggest, if my colleagues really want to get tough on frivolous lawsuits, they will support the Democratic substitute, and if they want to be sure that an American citizen who is injured in America has the right to sue a foreign corporation that was the perpetrator of a tortious act, they better vote against the Republican bill and vote for the substitute.

I know the gentleman from Wisconsin (Mr. SENSENBRENNER) did not intend for that to be the effect, but that is the effect of the language that he has offered up today; and I would suggest that any Member on either side of the aisle would be well advised to vote against his bill to ensure that that does not occur to an American citizen who would be denied the right to file a lawsuit against a foreign corporation.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, the JOHN KERRY for President campaign has endorsed national legislation in which "lawyers who file frivolous cases would face tough, mandatory sanctions, including a 'three strikes and you're out' provision that forbids lawyers who file three frivolous cases from bringing another suit for the next 10 years."

Unfortunately, the Democratic substitute did not listen to what the Kerry campaign said and does not forbid lawyers who file three or more frivolous lawsuits from bringing future lawsuits. The substitute only provides that on three strikes the offending attorney will be referred to a bar association, and no action need be taken by the bar to discipline the lawyer.

The base bill, H.R. 4571, on the other hand, currently provides that an attorney who files frivolous lawsuits will be suspended for at least a year and perhaps much longer if the court deems it appropriate.

I would ask all Members to reject the Democratic substitute. This quote that I have given from the Kerry for President campaign and those that the gentleman from Florida (Mr. KELLER) has quoted of Senator EDWARDS in Newsweek magazine of last December, the Republican bill has got the type of bipartisan support that is needed to deal with this problem.

I would urge a "no" vote on the substitute and passage of the base bill.

Mr. DELAHUNT. Mr. Speaker, I am profoundly concerned about the erosion of the independence and statehood role in our judicial system. This bill is just another attack on access to the courts, and the latest attempt to override existing State laws. At this rate, we will have a justice system available only to corporate America. Litigation costs already make the courts unavailable for the average person and small business. This bill takes our country further in the wrong direction.

This bill will not "take back the courts" for plaintiffs. To the contrary, Congress continues to block access to justice. Imagine a system that leaves the tobacco industry unchecked. Imagine the number of unnecessary deaths if the trial bar could not keep unsafe tires off our cars. Or a justice system that fails to uncover contamination of public water supplies. We need the private sector. The trial bar plays an important role in the protection of American consumers. Yet, I dare say, we are going in the wrong direction.

In another all-too-familiar pattern for this Congress, this bill is another court-stripping measure limiting judicial discretion. From civil rights claims to constitutional challenges, this Congress strips courts of their ability to hear cases. Congress—not a judge sitting in a courtroom—wants to decide if a case is meritorious. Congress—not a judge—will establish inflexible guidelines and impose mandatory sanctions for lawyers. Congress is trying to micromanage the judicial system as well as state judiciaries.

We talk a lot in this Chamber about respecting States' rights. Yet, this bill represents an unprecedented invasion into the traditional jurisdiction of State courts. This unwarranted intrusion into States' rights is wrong. States should be able to set their own rules for the game, including those governing the professional conduct of lawyers. Let's not waste any more time undermining the principles of federalism on a piecemeal basis. Why not simply abolish the 10th Amendment? The bill's sponsors claim an agenda of reform—this is not reform. This is about reeling in the wrong direction.

For all these reasons, I urge my colleagues to reject H.R. 4571 and support the Democratic substitute offered by my colleague from Texas.

The SPEAKER pro tempore (Mr. LAHOOD). All time for debate has expired.

Pursuant to House Resolution 766, the previous question is ordered on the bill, as amended, and on the further amendment by the gentleman from Texas (Mr. TURNER).

The question is on the amendment in the nature of a substitute offered by the gentleman from Texas (Mr. TURNER).

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

Mr. TURNER of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 177, nays 226, not voting 30, as follows:

[Roll No. 448]

YEAS—177

Abercrombie Harman Neal (MA)
 Baca Herseth Oberstar
 Baird Hill Obey
 Baldwin Hincey Olver
 Becerra Hinojosa Ortiz
 Bell Hoeffel Pallone
 Berkley Holden Pascarell
 Berry Holt Pastor
 Bishop (GA) Honda Payne
 Bishop (NY) Hooley (OR) Pelosi
 Blumenauer Hoyer Peterson (MN)
 Boswell Insee Pomeroy
 Boucher Israel Price (NC)
 Boyd Jackson (IL) Rahall
 Brady (PA) Jackson-Lee Rangel
 Brown (OH) (TX) Reyes
 Brown, Corrine Jefferson Rodriguez
 Butterfield John Ross
 Capps Johnson (IL) Rothman
 Capuano Jones (OH) Roybal-Allard
 Cardin Kanjorski Ruppersberger
 Cardoza Kaptur Rush
 Carson (IN) Kildeer Ryan (OH)
 Carson (OK) Kilpatrick Sabo
 Case Kind Sánchez, Linda
 Chandler Kucinich T.
 Clay Lampson Sanchez, Loretta
 Clyburn Lantos Sanders
 Cooper Larsen (WA) Sandlin
 Cummings Larson (CT) Schakowsky
 Davis (AL) Lee Schiff
 Davis (CA) Levin Scott (GA)
 Davis (FL) Lewis (GA) Scott (VA)
 Davis (IL) Lipinski Sherman
 DeFazio Lowey Skelton
 DeGette Lynch Smith (WA)
 Delahunt Majette Solis
 DeLauro Maloney Spratt
 Deutsch Matsui Stark
 Dicks McCarthy (MO) Strickland
 Dingell McCarthy (NY) Stupak
 Dooley McCollum Tanner
 Doyle McDermott Tauscher
 Duncan McGovern Thompson (CA)
 Edwards McIntyre Thompson (MS)
 Emanuel McNulty Tierney
 Eshoo Meehan Turner (TX)
 Etheridge Meek (FL) Udall (CO)
 Evans Meeks (NY) Udall (NM)
 Farr Menendez Van Hollen
 Fattah Michaud Visclosky
 Filner Millender Waters
 Ford McDonald Watson
 Frank (MA) Miller (NC) Watt
 Frost Miller, George Waxman
 Gonzalez Moore Weiner
 Gordon Moran (VA) Wexler
 Green (TX) Murtha Woolsey
 Grijalva Nadler Wu
 Gutierrez Napolitano Wynn

NAYS—226

Aderholt Capito Flake
 Akin Carter Foley
 Alexander Castle Forbes
 Allen Chabot Fossella
 Andrews Chocola Franks (AZ)
 Bachus Coble Frelinghuysen
 Baker Cole Gallegly
 Barrett (SC) Collins Garrett (NJ)
 Bartlett (MD) Costello Gerlach
 Barton (TX) Cox Gibbons
 Bass Cramer Gilchrest
 Beauprez Crane Gillmor
 Berman Crenshaw Gingrey
 Biggert Cubin Goode
 Bilirakis Culberson Goodlatte
 Bishop (UT) Cunningham Granger
 Blunt Davis (TN) Graves
 Boehner Davis, Jo Ann Green (WI)
 Bonilla Davis, Tom Gutknecht
 Bono Deal (GA) Hall
 Boozman DeLay Harris
 Bradley (NH) DeMint Hart
 Brady (TX) Diaz-Balart, L. Hastings (WA)
 Brown (SC) Diaz-Balart, M. Hayes
 Brown-Waite, Doggett Hayworth
 Ginny Doolittle Hefley
 Burgess Dreier Hensarling
 Burns Dunn Herger
 Burr Ehlers Hobson
 Burton (IN) Emerson Hoekstra
 Buyer English Hostettler
 Calvert Everrett Houghton
 Camp Feeney Hulshof
 Cantor Ferguson Hunter

Hyde Myrick Shadegg
 Isakson Nethercutt Shaw
 Issa Neugebauer Shays
 Jenkins Ney Sherwood
 Johnson (CT) Northup Shimkus
 Johnson, Sam Norwood Shuster
 Jones (NC) Nunes Simmons
 Keller Nussle Simpson
 Kelly Osborne Smith (MI)
 Kennedy (MN) Ose Smith (NJ)
 King (IA) Otter Smith (TX)
 King (NY) Oxley Snyder
 Kingston Paul Souder
 Kirk Pearce Stearns
 Kline Pence Stenholm
 Knollenberg Peterson (PA) Sullivan
 Kolbe Petri Sweeney
 LaHood LaHood Pickering
 Latham Pitts Tancredo
 LaTourette Platts Taylor (MS)
 Leach Pombo Taylor (NC)
 Lewis (CA) Porter Terry
 Lewis (KY) Portman Thomas
 Linder Pryce (OH) Thornberry
 LoBiondo Putnam Tiahrt
 Logfren Quinn Tiberi
 Lucas (KY) Ramstad Toomey
 Lucas (OK) Regula Turner (OH)
 Manzullo Rehberg Upton
 Markey Renzi Vitter
 Matheson Reynolds Walden (OR)
 McCotter Rogers (AL) Walsh
 McCreery Rogers (KY) Wamp
 McHugh Rogers (MI) Weldon (FL)
 McKeon Rohrabacher Weldon (PA)
 Mica Ros-Lehtinen Weller
 Miller (MI) Royce Wicker
 Miller, Gary Ryan (WI) Wilson (NM)
 Mollohan Ryun (KS) Wilson (SC)
 Moran (KS) Saxton Wolf
 Murphy Sensenbrenner Young (AK)
 Musgrave Sessions Young (FL)

NOT VOTING—30

Ackerman Goss Miller (FL)
 Ballenger Greenwood Owens
 Blackburn Hastings (FL) Radanovich
 Boehlert Istook Schrock
 Bonner Johnson, E. B. Serrano
 Cannon Kennedy (RI) Slaughter
 Conyers Kleczka Tauzin
 Crowley Langevin Towns
 Engel Marshall Velázquez
 Gephardt McInnis Whitfield

□ 1457

Mrs. KELLY, Mr. GINGREY and Mr. GARRETT of New Jersey changed their vote from “yea” to “nay.”

Messrs. CARDOZA, DINGELL and CUMMINGS changed their vote from “nay” to “yea.”

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LAHOOD). 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.

MOTION TO RECOMMIT OFFERED BY MS. DELAURO

Ms. DELAURO. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Ms. DELAURO. I am opposed to the bill in its current form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Ms. DeLauro moves to recommit the bill H.R. 4571 to the Committee on the Judiciary with instructions to report the same back to the House forth with with the following amendment:

Section 4, insert at the end the following new subsection:

(e) NOT APPLICABLE TO BENEDICT ARNOLD CORPORATIONS.—

(1) IN GENERAL.—To the extent the defendant is a Benedict Arnold corporation, this section does not apply, notwithstanding subsection (d).

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term “Benedict Arnold corporation” means a foreign corporation that acquires a domestic corporation in a corporate repatriation transaction.

(B) The term “corporate repatriation transaction” means any transaction in which—

(i) a foreign corporation acquires substantially all of the properties held by a domestic corporation;

(ii) shareholders of the domestic corporation, upon such acquisition, are the beneficial owners of securities in the foreign corporation that are entitled to 50 percent or more of the votes on any issue requiring shareholder approval; and

(iii) the foreign corporation does not have substantial business activities (when compared to the total business activities of the corporate affiliated group) in the foreign country in which the foreign corporation is organized.

Ms. DELAURO (during the reading). Mr. Speaker, I ask unanimous consent 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 Connecticut?

There was no objection.

The SPEAKER pro tempore. The gentlewoman from Connecticut (Ms. DELAURO) is recognized for 5 minutes in support of her motion to recommit.

Ms. DELAURO. Mr. Speaker, this motion to recommit is designed to help address the problem of domestic corporations reincorporating abroad for the express purpose of avoiding new U.S. taxes and new new legal liability.

As we fight terrorism at home and abroad, when we have hundreds of thousands of troops in harm's way and are trying to find the resources to equip our first responders and ensure the safety of our ports and air transit, the last thing we should be doing is passing legislation that helps what are essentially corporate tax dodgers.

With increasing frequency, companies are setting up shell corporations in places like Bermuda while continuing to be owned by U.S. shareholders and doing business in the United States. The only difference is that this new so-called foreign company escapes substantial tax liability. What these companies have done is a slap in the face of every company which has chosen to stay in America and of every citizen who faithfully pays their taxes.

In my State of Connecticut, Stanley Works once considered incorporating in Bermuda to keep up with their competitors who had already moved overseas. But they changed their mind. They did the right thing.

But the bill before us provides a litigation and financial windfall to corporate expatriates at the expense of companies like Stanley Works. Instead of permitting claims to be filed wherever a corporation does business, or has

minimum contacts, this bill requires the suit to be brought where the defendant's principal place of business is located. Perhaps that makes some sort of sense in the abstract, but in the case of a corporate expatriate what that means is that in most cases claims could only be filed in places like Bermuda under their liability laws.

It is bad enough that these companies are essentially cheating on their taxes by arguing, rather unconvincingly, that they are not American companies. But for them to use this rationale to escape liability is outrageous. This is unfair to the victims, and unfair to the domestic company who would be forced to compete against these companies.

□ 1500

The Congressional Research Service has analyzed this bill and wrote: "In certain circumstances a United States citizen injured in this country would not have the judicial forum in the United States in which to seek relief." In other words, in certain cases, American citizens would have no judicial recourse whatsoever.

These are American companies flouting American tax law. They do business here in the United States, and they should be subject to our laws, period. So my motion to recommit amends the underlying bill to say the new limitations on jurisdiction and venue do not apply to a corporate expatriate company. This is a modest, commonsense change to address the irresponsible actions of a handful of companies. It is time for these companies to live up to their obligations as American corporate citizens. I urge my colleagues to vote "yes" on this motion to recommit.

Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. INSLEE).

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

Mr. INSLEE. Mr. Speaker, we have a delicious debate before us because we Democrats believe if Stanley Tool tries to avoid taxes by moving to Bermuda and their tool blows up and puts out your eye, an American ought to have access to the American judicial system in front of an American jury.

The Republicans want to outsource the job to Bermuda. If a corporation goes to France and a product blows up and hurts you, we Democrats believe Americans ought to have access to the Americans judicial system. The Republicans want to outsource the jury system to Paris. We do not even have French fries in our cafeteria anymore, and the other side is outsourcing our jobs to France. The same applies to Germany and every other country. The other side has outsourced enough jobs; we are not going to allow the outsourcing of our jury system, too. Support this motion.

Ms. DELAURO. Mr. Speaker, I urge my colleagues to support this motion

to recommit, and I want to thank the gentlewoman from Texas (Ms. JACKSON-LEE), who is a member of the Committee on the Judiciary who was going to offer this motion in committee.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. LAHOOD). The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 5 minutes.

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. 4571.

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

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, the real outsourcing motion is the one which has been made by the gentlewoman from Connecticut (Ms. DELAURO). If this motion is adopted and this bill is enacted into law, it will cost American jobs. Anytime the cost of doing business in the United States goes up, the number of Americans with jobs will go down. This motion to recommit would increase the cost of doing business in this country and in the process lose American jobs.

I do not want to hear anybody who has argued in favor of this motion ever to come back and complain about the outsourcing of American jobs to foreign countries if this motion passes because this is the type of thing that will absolutely do that.

The motion to recommit defines the covered entities as those that have substantial business activities in this country, and hurting substantial business in American substantially hurts American workers. Stand up for American workers; vote down this motion to recommit. Stop the outsourcing of jobs by last-minute motions made on the floor with red herring arguments. Vote "no" on the motion to recommit.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. 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. DELAURO. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum period of time for any electronic vote on the question of passage of the bill.

The vote was taken by electronic device, and there were—ayes 196, noes 211, not voting 26, as follows:

[Roll No. 449]

AYES—196

Abercrombie	Gutiérrez	Northup
Allen	Harman	Oberstar
Andrews	Herseth	Obey
Baca	Hill	Olver
Baird	Hinchesy	Ortiz
Baldwin	Hinojosa	Pallone
Becerra	Hoefel	Pascrell
Bell	Holden	Pastor
Berkley	Holt	Payne
Berman	Honda	Pelosi
Berry	Hoolley (OR)	Peterson (MN)
Bishop (GA)	Hoyer	Pomeroy
Bishop (NY)	Inslee	Price (NC)
Blumenauer	Israel	Rahall
Boswell	Jackson (IL)	Rangel
Boucher	Jackson-Lee	Reyes
Boyd	(TX)	Rodriguez
Brady (PA)	Jefferson	Ross
Brown (OH)	John	Rothman
Brown, Corrine	Johnson (IL)	Roybal-Allard
Butterfield	Jones (OH)	Ruppersberger
Capps	Kanjorski	Rush
Capuano	Kaptur	Ryan (OH)
Cardin	Kildee	Sabo
Cardoza	Kilpatrick	Sánchez, Linda
Carson (IN)	Kind	T.
Carson (OK)	Kucinich	Sanchez, Loretta
Case	Lampson	Sanders
Chandler	Lantos	Sandlin
Clay	Larsen (WA)	Schakowsky
Clyburn	Larson (CT)	Schiff
Cooper	Lee	Scott (GA)
Costello	Levin	Scott (VA)
Cramer	Lewis (GA)	Sherman
Cummings	Lipinski	Skelton
Davis (AL)	Lofgren	Smith (WA)
Davis (CA)	Lowey	Snyder
Davis (FL)	Lucas (KY)	Solis
Davis (IL)	Lynch	Spratt
Davis (TN)	Majette	Stark
DeFazio	Maloney	Stenholm
DeGette	Markey	Strickland
Delahunt	Matheson	Stupak
DeLauro	Matsui	Tanner
Deutsch	McCarthy (MO)	Tauscher
Dicks	McCarthy (NY)	Taylor (MS)
Dingell	McCollum	Taylor (NC)
Doggett	McDermott	Thompson (CA)
Dooley (CA)	McGovern	Thompson (MS)
Doyle	McIntyre	Tierney
Duncan	McNulty	Turner (TX)
Edwards	Meehan	Udall (CO)
Emanuel	Meek (FL)	Udall (NM)
Eshoo	Meeks (NY)	Van Hollen
Etheridge	Menendez	Visclosky
Evans	Michaud	Waters
Farr	Millender-	Watson
Fattah	McDonald	Watt
Filner	Miller (NC)	Waxman
Ford	Miller, George	Weiner
Frank (MA)	Mollohan	Wexler
Frost	Moore	Wilson (NM)
Gonzalez	Moran (VA)	Woolsey
Goode	Murtha	Wu
Gordon	Nadler	Wynn
Green (TX)	Napolitano	
Grijalva	Neal (MA)	

NOES—211

Aderholt	Buyer	Dunn
Akin	Calvert	Ehlers
Alexander	Camp	Emerson
Bachus	Cantor	English
Baker	Capito	Everett
Barrett (SC)	Carter	Feeney
Bartlett (MD)	Castle	Ferguson
Barton (TX)	Chabot	Flake
Bass	Chocola	Foley
Beauprez	Coble	Forbes
Biggart	Cole	Fossella
Bilirakis	Collins	Franks (AZ)
Bishop (UT)	Cox	Frelinghuysen
Blunt	Crane	Galleghy
Boehner	Crenshaw	Garrett (NJ)
Bonilla	Cubin	Gerlach
Bono	Culberson	Gibbons
Boozman	Cunningham	Gilchrest
Bradley (NH)	Davis, Jo Ann	Gillmor
Brady (TX)	Davis, Tom	Gingrey
Brown (SC)	Deal (GA)	Goodlatte
Brown-Waite,	DeLay	Goss
Ginny	DeMint	Granger
Burgess	Diaz-Balart, L.	Graves
Burns	Diaz-Balart, M.	Green (WI)
Burr	Doolittle	Greenwood
Burton (IN)	Dreier	Gutknecht

Hall	McCrery	Ros-Lehtinen	Beauprez	Graves	Pearce	Hoyer	McNulty	Ryan (OH)
Harris	McHugh	Royce	Biggert	Green (WI)	Pence	Inslee	Meehan	Sabo
Hart	McKeon	Ryan (WI)	Bilirakis	Greenwood	Peterson (MN)	Israel	Meek (FL)	Sánchez, Linda
Hastings (WA)	Mica	Ryun (KS)	Bishop (UT)	Gutknecht	Peterson (PA)	Jackson (IL)	Meeks (NY)	T.
Hayes	Miller (MI)	Saxton	Blunt	Hall	Petri	Jackson-Lee	Menendez	Sanchez, Loretta
Hayworth	Miller, Gary	Sensenbrenner	Boehner	Harris	Pickering	(TX)	Michaud	Sandlin
Hefley	Moran (KS)	Sessions	Bonilla	Hart	Pitts	Jefferson	Millender-	Schakowsky
Hensarling	Murphy	Shadegg	Bono	Hastings (WA)	Platts	Jones (OH)	McDonald	Schiff
Herger	Musgrave	Shaw	Boozman	Hayes	Pombo	Kanjorski	Miller (NC)	Scott (VA)
Hobson	Myrick	Shays	Boyd	Hayworth	Porter	Kaptur	Miller, George	Sherman
Hoekstra	Nethercutt	Sherwood	Bradley (NH)	Hefley	Portman	Kildee	Mollohan	Skelton
Hostettler	Neugebauer	Shimkus	Brady (TX)	Hensarling	Pryce (OH)	Kilpatrick	Moore	Smith (WA)
Houghton	Ney	Shuster	Brown (SC)	Herger	Putnam	Kind	Murtha	Snyder
Hulshof	Norwood	Simmons	Brown-Waite,	Hobson	Quinn	King (NY)	Nadler	Solis
Hunter	Nunes	Simpson	Ginny	Hoekstra	Radanovich	Kucinich	Napolitano	Spratt
Hyde	Nussle	Smith (MI)	Burgess	Holden	Ramstad	Lampson	Neal (MA)	Stark
Isakson	Osborne	Smith (NJ)	Burns	Hostettler	Regula	Lantos	Oberstar	Strickland
Issa	Ose	Smith (TX)	Burr	Houghton	Rehberg	Larsen (WA)	Obey	Stupak
Istook	Otter	Souder	Burton (IN)	Hulshof	Renzi	Larson (CT)	Oliver	Tauscher
Jenkins	Oxley	Stearns	Buyer	Hunter	Reynolds	Lee	Ortiz	Thompson (CA)
Johnson (CT)	Paul	Sullivan	Calvert	Hyde	Rogers (AL)	Levin	Pallone	Thompson (MS)
Johnson, Sam	Pearce	Sullivan	Camp	Isakson	Rogers (KY)	Lewis (GA)	Pascarell	Tierney
Jones (NC)	Pence	Sweeney	Cantor	Issa	Rogers (MI)	Lipinski	Pastor	Turner (TX)
Keller	Peterson (PA)	Tancredó	Capito	Istook	Rohrabacher	Lofgren	Payne	Udall (CO)
Kelly	Petri	Terry	Cardoza	Jenkins	Ros-Lehtinen	Lowey	Pelosi	Udall (NM)
Kennedy (MN)	Pickering	Thomas	Carson (OK)	Johnson (CT)	Royce	Lynch	Pomeroy	Van Hollen
King (IA)	Pitts	Thornberry	Carter	Johnson (IL)	Ryan (WI)	Majette	Price (NC)	Visclosky
King (NY)	Platts	Tiahrt	Case	Johnson, Sam	Ryun (KS)	Maloney	Rahall	Waters
Kingston	Pombo	Tiberi	Castle	Jones (NC)	Saxton	Markey	Rangel	Watson
Kirk	Porter	Toomey	Chabot	Keller	Scott (GA)	Matsui	Reyes	Watt
Kline	Portman	Turner (OH)	Chocola	Kelly	Sensenbrenner	McCarthy (MO)	Rodriguez	Waxman
Knollenberg	Pryce (OH)	Upton	Coble	Kennedy (MN)	Sessions	McCarthy (NY)	Ross	Weiner
Kolbe	Putnam	Vitter	Cole	King (IA)	Shadegg	McCollum	Rothman	Wexler
LaHood	Quinn	Walden (OR)	Collins	Kingston	Shaw	McDermott	Roybal-Allard	Woolsey
Latham	Radanovich	Walsh	Cox	Kirk	Shays	McGovern	Ruppersberger	Wu
LaTourette	Ramstad	Wamp	Cramer	Kline	Sherwood	McIntyre	Rush	Wynn
Leach	Regula	Weldon (FL)	Crane	Knollenberg	Shimkus			
Lewis (CA)	Rehberg	Weldon (PA)	Crenshaw	Kolbe	Shuster			
Lewis (KY)	Renzi	Weller	Cubin	LaHood	Simmons			
Linder	Reynolds	Wicker	Culberson	Latham	Simpson			
LoBiondo	Rogers (AL)	Wilson (SC)	Cunningham	LaTourette	Smith (MI)			
Lucas (OK)	Rogers (KY)	Wolf	Davis (TN)	Leach	Smith (NJ)			
Manzullo	Rogers (MI)	Young (AK)	Davis, Jo Ann	Lewis (CA)	Smith (TX)			
McCotter	Rohrabacher	Young (FL)	Davis, Tom	Lewis (KY)	Souder			
			Deal (GA)	Linder	Stearns			
			DeLay	LoBiondo	Stenholm			
			DeMint	Lucas (KY)	Sullivan			
			Diaz-Balart, M.	Lucas (OK)	Sweeney			
			Dreier	Manzullo	Tancredó			
			Duncan	Matheson	Tanner			
			Dunn	McCotter	Taylor (MS)			
			Edwards	McCrery	Taylor (NC)			
			Ehlers	McHugh	Terry			
			Emerson	McKeon	Thomas			
			English	Mica	Thornberry			
			Everett	Miller (MI)	Tiahrt			
			Feeney	Miller, Gary	Tiberi			
			Ferguson	Moran (KS)	Toomey			
			Flake	Moran (VA)	Turner (OH)			
			Foley	Murphy	Upton			
			Forbes	Musgrave	Vitter			
			Fossella	Myrick	Walden (OR)			
			Franks (AZ)	Nethercutt	Walsh			
			Galleghy	Neugebauer	Wamp			
			Garrett (NJ)	Ney	Weldon (FL)			
			Gerlach	Northup	Weldon (PA)			
			Gibbons	Norwood	Weller			
			Gilchrest	Nunes	Wicker			
			Gillmor	Nussle	Wilson (NM)			
			Gingrey	Osborne	Wilson (SC)			
			Goode	Ose	Wolf			
			Goodlatte	Otter	Young (AK)			
			Goss	Oxley	Young (FL)			
			Granger	Paul				

NOT VOTING—26

Ackerman	Gephardt	Owens
Ballenger	Hastings (FL)	Schrock
Blackburn	Johnson, E. B.	Serrano
Boehrlert	Kennedy (RI)	Slaughter
Bonner	Kleczka	Tauzin
Cannon	Langevin	Towns
Conyers	Marshall	Velázquez
Crowley	McInnis	Whitfield
Engel	Miller (FL)	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD) (during the vote). Members are advised that 2 minutes remain to vote.

□ 1525

Mr. SMITH of New Jersey changed his vote from “aye” to “no.”

Mr. CARSON of Oklahoma, Mr. TAYLOR of North Carolina and Mrs. NORTHUP changed their vote from “no” to “aye.”

So the motion was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. 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.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 229, nays 174, not voting 30, as follows:

[Roll No. 450]

YEAS—229

Aderholt	Bachus	Bartlett (MD)
Akin	Baker	Barton (TX)
Alexander	Barrett (SC)	Bass

Abercrombie	Carson (IN)	Emanuel
Allen	Chandler	Eshoo
Andrews	Clay	Etheridge
Baca	Clyburn	Evans
Baird	Cooper	Farr
Baldwin	Costello	Fattah
Becerra	Cummings	Filmer
Bell	Davis (AL)	Ford
Berkley	Davis (CA)	Frank (MA)
Berman	Davis (FL)	Frost
Berry	Davis (IL)	Gonzalez
Bishop (GA)	DeFazio	Green (TX)
Bishop (NY)	DeGette	Grijalva
Blumenauer	Delahunt	Gutierrez
Boswell	DeLauro	Harman
Boucher	Deutsch	Herseth
Brady (PA)	Diaz-Balart, L.	Hill
Brown (OH)	Dicks	Hinchee
Brown, Corrine	Dingell	Hinojosa
Butterfield	Doggett	Hoefl
	Dooley (CA)	Holt
	Doolittle	Honda
	Doyle	Hooley (OR)

NAYS—174

NOT VOTING—30

Ackerman	Gephardt	Miller (FL)
Ballenger	Gordon	Owens
Blackburn	Hastings (FL)	Sanders
Boehrlert	John	Schrock
Bonner	Johnson, E. B.	Serrano
Cannon	Kennedy (RI)	Slaughter
Conyers	Kleczka	Tauzin
Crowley	Langevin	Towns
Engel	Marshall	Velázquez
Frelinghuysen	McInnis	Whitfield

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain to vote.

□ 1535

Mr. SANDLIN and Mr. BISHOP of New York changed their vote from “yea” to “nay.”

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. KENNEDY of Rhode Island. Mr. Speaker, on the evening of September 13 and the morning of September 14, I was attending the funeral services of the Richard Langevin, the father of our colleague Congressman JAMES LANGEVIN, and was unable to vote on rollcall votes Nos. 441–450.

I respectfully request the opportunity to record my position on rollcall votes Nos. 441, 442, 443, 444, 445, 446, 447, 448, 449, 450.

It was my intention to vote “aye” on rollcall vote No. 441, “aye” on rollcall vote No. 442, “aye” on rollcall vote No. 443, “no” on rollcall vote No. 444, “no” on rollcall vote No. 445, “aye” on rollcall vote No. 446, “aye” on rollcall vote No. 447, “aye” on rollcall vote No. 448, “aye” on rollcall vote No. 449, and “no” on rollcall vote No. 450.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5025, TRANSPORTATION, TREASURY, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2005

Mr. REYNOLDS, from the Committee on Rules, submitted a privileged report (Rept. No. 108-686) on the resolution (H. Res. 770) providing for consideration of the bill (H.R. 5025) making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2005, and for other purposes, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR CONSIDERATION OF H.R. 5025, TRANSPORTATION, TREASURY, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2005

Mr. REYNOLDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 770 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 770

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 5025) making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2005, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. SIMPSON). The question is, Will the House now consider House Resolution 770.

The question was taken; and (two thirds having voted in favor thereof) the House agreed to consider House Resolution 770.

The SPEAKER pro tempore. The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN),

pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

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

Mr. REYNOLDS. Mr. Speaker, House Resolution 770 is an open rule that provides for consideration of H.R. 5025, the Departments of Transportation, Treasury, and Independent Agencies Appropriations Act for fiscal year ending September 30, 2005. The rule waives all points of order against consideration of the bill.

The rule also provides for 1 hour of general debate to be equally divided between the chairman and ranking minority member of the Committee on Appropriations. The rule provides that the bill shall be considered for amendment by paragraph. Further, the rule authorizes the Chair to accord priority in recognition to Members who have pre-printed their amendments in the CONGRESSIONAL RECORD. And, finally, the rule provides one motion to recommit with or without instructions.

Mr. Speaker, the Committee on Appropriations had an extremely difficult task this year in funding the many needs of our Nation. They answered the call by diligently working to produce a bill that deals with our needs in a whole host of areas, including the Department of Transportation, the Department of the Treasury, along with the Postal Service and the Executive Office of the President.

In total the bill provides \$89.8 in total budgetary resources. This funding represents the commitment of this Congress to provide the necessary resources for programs and projects across the Nation. The bill provides close to \$35 billion in highway spending, a boost of \$1 billion over last year's guarantee. This amount fully funds the House-passed authorization level and will go a long ways towards constructing and improving highways and roads in our communities.

Transit spending of over \$7 billion includes over \$1 billion for new fixed guideway systems. Amtrak is provided with \$900 million, which is equal to the President's request. Included in this funding is \$500 million for capital improvements and \$60 million to ensure that important commuter operations continue.

Mr. Speaker, the underlying bill also provides significant support for the Federal Aviation Administration with a total of \$14 billion. This includes \$3.5 billion for the Airport Improvement Program and \$102 million for Essential Air Service. The total FAA funding also includes \$9 million above the budget request in order to hire and train additional traffic controllers.

From highways and transit programs to airports and the FAA, the underlying bill ensures that we have a reliable and stable transportation infrastructure. Mr. Speaker, the underlying bill also gives support to the Treasury

Department, bringing their appropriation to over \$11 billion. Included under the General Services Administration is over \$90 million in funding for new border stations. This will not only enhance protection of our borders but also improve commercial efficiency. The bill also includes an increase of \$2.8 million for the Financial Crimes Enforcement Network, which is tasked with implementing the Treasury Department's anti-money laundering regulations.

Also included in the bill is considerable funding for support of national anti-drug efforts. The Office of National Drug Control Policy is provided with just over \$468 million. Within that funding is assistance to the National Youth Anti-Drug Media Campaign and full funding for the Drug-Free Communities program. This funding is essential to keep our children safe from drugs through education and community support.

Mr. Speaker, there are many more vital programs funded in the appropriations bill that I have not mentioned but that I know will be highlighted in detail during our debate later today.

I would like to commend the chairman and ranking member of both the full Committee on Appropriations and the subcommittee for their hard work on this extensive bill.

Mr. Speaker, I urge my colleagues to support the bill and the underlying rule.

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

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

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

Mr. MCGOVERN. Mr. Speaker, I want to thank the gentleman from New York (Mr. REYNOLDS) for yielding me the customary 30 minutes.

Mr. Speaker, sadly, the best that can be said of this fiscal year 2005 Transportation, Treasury, and Independent Agencies Appropriations bill is that it represents a valiant effort to fund the important agencies it covers despite a grossly deficient budget allocation. The subcommittee's fiscal year 2005 budget allocation is \$389 million less than the President's request and \$2 billion than the level of budget authority provided in the fiscal year 2004 Omnibus Appropriations bill.

So, therefore, I want to be begin by thanking the gentleman from Oklahoma (Mr. ISTOOK), subcommittee chairman, and the gentleman from Massachusetts (Mr. OLVER), ranking member, for their hard work and diligence in bringing this bill forward under very difficult and trying circumstances. The gentleman from Florida (Chairman YOUNG) and the gentleman from Wisconsin (Mr. OBEY), ranking member, also deserves credit for helping to craft a bipartisan bill that attempts to spread the pain of this pitifully inadequate budget allocation equally.

That being said, the fact remains that this appropriations bill does not meet the very real and growing needs of our Nation in a number of areas, particularly with respect to our deteriorating transportation infrastructure. And, Mr. Speaker, that simple fact is especially hard to reconcile with this administration's reckless fiscal policies of tax cuts for the wealthy.

This fiscal year 2005 Transportation, Treasury Appropriations bill provides \$89.9 billion in total funding, an increase of \$1 billion over the President's request and \$495 million below the fiscal year 2004 level. Discretionary spending is capped at \$25.4 billion, which is \$2.9 billion below the fiscal year 2004 level.

Among the more glaring shortcomings of this appropriations bill is the continued, conscious and deliberate underfunding of Amtrak. This recurring game of brinkmanship with our national passenger rail system has simply got to stop. During their brief tenure, David Gunn and his management team have made significant improvements in the operational efficiency of Amtrak by cutting waste and reducing expenses while increasing ridership and raising revenues. However, despite these impressive gains, there still exists a massive \$6 billion backlog of critical capital improvements, created in large part by years of deferred maintenance along the Northeast Corridor, which absolutely must be addressed.

No less than the Inspector General has stated that Amtrak needs \$1.5 billion annually just for its capital needs. Mr. Speaker, this capital backlog is not imagined. It is very real and we need to provide sufficient funding to address it.

The \$900 million provided for Amtrak in this appropriations bill is half of the \$1.8 billion Amtrak says it needs next fiscal year to keep the system operating reliably and to begin to address its capital backlog. If this \$900 million in funding is allowed to stand, Amtrak will likely cease operations in mid-2005. If my colleagues doubt that, perhaps they should update their resume and apply for Mr. Gunn's job. Otherwise, do not be surprised when the trains stop running in the spring of next year and no private rail carrier steps up and offers to operate passenger service without a public subsidy. My colleagues should consider themselves warned.

Mr. Speaker, the underfunding of Amtrak in this appropriations bill is compounded by a reduction in spending on new starts projects within the Federal Transit Administration's budget. At a time when our cities and towns are choking from congestion and the transportation reauthorization bill is mired in election year politics, we can scarcely afford to underfund projects which promote public transit. I have cities in my congressional district like Fall River in Massachusetts, which has 92,000 residents and is located only 50 miles south of Boston but has no access

to commuter rail service. In these tough fiscal times, the FTA's new start program represents the only hope of expanding commuter rail to cities like Fall River. We should be increasing funding for new starts, not reducing it.

Equally as troubling to me is the dramatic decrease in funding for Federal Aviation Administration facilities and equipment. This fiscal year 2005 appropriations bill provides \$392 million less for FAA facilities and equipment than the fiscal year 2004 enacted level. As the commercial airline industry continues to recover from the terrorist attacks of 9/11 and consumer confidence returns, we must not jeopardize the safety and the security of America's airways by short-changing the agency's staffing equipment or facilities.

□ 1545

In the Committee on Rules earlier today, Mr. Speaker, several amendments were offered to the rule, motions that would have provided protections for important amendments so that they could be debated and voted on right here on the House floor today. If the Committee on Rules had approved these motions, the House would have had the opportunity to debate and to vote on these amendments today. Unfortunately, as has become kind of regular order in the Committee on Rules, the Committee on Rules, on party-line votes, denied providing the necessary protections for these amendments, and they cannot be voted on today.

The first amendment brought to the Committee on Rules by the ranking member, the gentleman from Massachusetts (Mr. OLVER), would have increased funding for Amtrak by \$300 million. The cost of the amendment would be paid for by a small reduction in the 2001 and 2003 tax cuts for any person making more than \$1 million. This amendment would provide badly needed funds for Amtrak; and, as we all know, Amtrak desperately needs increased funds if it is to continue providing the services that all of our constituents rely on.

The second amendment would have protected from a point-of-order language already included in the bill that allows government jobs to be privatized only if such actions would save at least \$10 million or 10 percent of the program's cost. The Office of Management and Budget has been working on a proposed rule that puts civilian employees at a competitive disadvantage to noncivilian employees. This language would ensure that the civilian employees have a level playing field when it comes to competition with noncivilian employees.

Additionally, it would provide that taxpayer funds are properly spent, which is simply not the case under the new OMB guidelines. In other words, by leaving this provision unprotected, this important language, originally adopted in the committee, can be struck from the bill, making it much easier to privatize important Federal jobs.

The third amendment offered in the Committee on Rules today would have protected a provision in the bill that provides a 3.5 percent COLA for Federal civilian employees. This is the same level the President proposed for members of the Armed Forces; and while all of us support our troops and we want to ensure that our troops and their families are paid what they deserve, we cannot and we must not forget about the jobs that civilian and Federal employees do each and every day. In fact, I strongly believe we should provide Federal employees with equal pay adjustments.

Beyond that, a fair pay adjustment is needed to keep pace with private sector salaries so the Federal Government can compete for quality employees in the future.

Finally, Mr. Speaker, on a special note, I want to publicly commend the gentleman from Wisconsin (Mr. OBEY) for raising the very important issue of foreign truck certification in the full committee markup of this appropriations bill. As a former member of the House Committee on Transportation and Infrastructure and the lead sponsor of the Safe Highways and Infrastructure Preservation Act, I am keenly aware of the danger bigger trucks, foreign or domestic, pose to the American driving public on our interstates and highways. I would strongly encourage Members to take this issue very, very seriously and to immediately insist on stringent safety and environmental standards for foreign trucks.

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

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

Mr. Speaker, I looked over the transcript from last year and noticed how similar the debate is coming from my colleague, as the presentation was: we have to keep spending more money. There is not a district or a State or, quite frankly, a region of the country that does not feel that there is more need in transportation appropriations, whether it be this or from the trust fund; but the reality is, it becomes a time to look at working within a budget, working within the allocations.

I also want to remind my colleague that while the Committee on Rules is a traffic cop, deciding many things that comes before the Congress as it comes from committees to the floor, we have to be a little careful of just how much legislating we do on appropriations bills. I do not have to remind my colleague that there was a great deal of legislating on the appropriations bills via the amendments offered before the Committee on Rules today, thus making a decision not to make them in order, as they were not germane; and also there becomes the subject of looking at paying for some of this by raising taxes.

Now, I look at the fact that there is a tax cut on the books and it is the law of the land, and that is the rate and what people are going to pay. Every

time we want to add something by taking it from the tax cut, we are raising taxes. I think the Committee on Rules, at least on the Republican side of the aisle, did not want to get into raising taxes.

So, Mr. Speaker, this is not an easy budget. The entire 13 appropriations bills and the transportation bill is no easier than the others that we have moved before us or a few that we have to complete our work on. But the fact is, the Committee on Appropriations has worked hard. They have worked under the allocations that they had available, and we should always be on the lookout for an opportunity where we can provide assistance in transportation needs as money becomes available.

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

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

I just want to say I appreciate the gentleman's response, but I would just suggest that his priorities and the priorities of his leadership are wrong. What we are suggesting here is that we do have serious needs in this country, and the gentleman admitted it, in terms of transportation and infrastructure needs, and we need to address them. The gentleman and his party think that it is more important to give millionaires tax cuts rather than take those resources and invest it in our infrastructure so our communities can become more competitive, so that we can create more jobs. I mean, this mess we are in is wholly created by those of you who run this Congress, and it is an unfortunate situation that we find ourselves in right now.

There are communities all across this country, States all across this country, Governors all across this country, Republicans and Democrats, who are frustrated that the Republican leadership cannot get their act together and get a highway and transportation bill before both the House and the Senate that we could put on the President's desk. I think when they look at the underfunding of some very important public transportation needs, that frustration is going to continue.

So you are making choices, and I am suggesting that you are making the wrong choices.

Mr. Speaker, I yield 2 minutes to the gentleman from Utah (Mr. MATHESON).

Mr. MATHESON. Mr. Speaker, these are difficult times for our Nation. We are fighting terrorism on numerous fronts. We have commitments to keep our troops overseas, and we struggle to meet our needs here at home. Our economy needs a boost, unemployment is high, and our future budget deficits are predicted to be the highest in the history of this great Nation.

Now is not the time for Members of Congress to be voting themselves a pay raise. We need to show the American people that we are willing to make sacrifices. We need to budget, live within our means, and make careful spending

decisions based on our most pressing priorities.

Mr. Speaker, let us send a signal to the American people that we recognize their struggle in today's economy. Vote "no" on the previous question so we can have an opportunity to block the automatic cost-of-living adjustment to Members of Congress. This vote ought to be cast in the light of day and on the record. A "no" vote on the previous question will allow Members to vote up or down on the cost-of-living adjustment.

If the previous question is defeated, I will offer an amendment to the rule. My amendment will block the fiscal year 2005 automatic cost-of-living pay raise for Members of Congress. Because this amendment requires a waiver, the only way to get to this issue is to defeat the previous question. Therefore, I urge Members to vote "no" on the previous question.

Mr. REYNOLDS. Mr. Speaker, I was listening to my colleague, the gentleman from Massachusetts (Mr. MCGOVERN). I know that he is an expert on rules and rules policy. That is, with an open rule, any Member can offer any germane amendment to change however they want this transportation and postal bill. So as we bring the rule, which is an open rule, to the body and the House makes its decisions of passing the rule, it allows us to get into the debate on the appropriations report. That certainly allows, under an open rule, any germane amendment to be offered that any Member chooses, and I know we will have many. This bill always has a tremendous amount of amendments to it.

So I look forward to the debate and the votes as they come, and I am sure there will be many where individual Members will offer amendments that they deem are important for consideration here; and if they are germane, they will be entertained by the House.

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

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

I would just simply respond to the gentleman that the Committee on Rules makes its own rules, as we have seen so clearly since the majority has taken over control of that committee. So one of the frustrations that Members of Congress have is that the only way for their issues to be heard, the only way to bring up these different points of view is to go before the Committee on Rules and to ask the Committee on Rules for protections or for waivers, which, to be honest with my colleagues, is something that has happened in the past. So I would simply say to the gentleman, that is all we want, is to be able to, in the people's House, have a good debate and to be able to bring up the issues that our constituents talk to us about.

With regard to this bill in particular, which many of us think is sadly underfunded because of some bad priorities of the people who are running this

House, we would like to have the opportunity to correct that. When we go home, and I suspect when the gentleman goes home and he talks to his mayors and his town managers and to his Governor, they will tell him that there is a desperate need for additional transportation infrastructure funding. There are bridges that are collapsing in this country, there are road projects that are not being done; and the longer we put them on hold, the more expensive they are going to be. I would say also, it has a negative impact on economic development.

I would also suggest to the gentleman, since his party does not seem very interested in creating jobs, since they have a job-loss record that is on par with Herbert Hoover, that this is a way to create jobs. We might actually do something different and get up and actually pass a piece of legislation that will stimulate economic growth and create some jobs, and I think a lot more people would be happy in this country.

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

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

Again, the Committee on Rules has to sort it all out. I suppose each of us would like our own personal waiver of something that we would like to add into this appropriations bill, whether it is our favorite road, our favorite bridge, our favorite railroad station or track or some other aspect, or ports or harbors or whatever else we can stick in the bill.

The reality is that we have a budget. We have 302(b) allocations to 13 appropriations bills, and we have some tough work to do. Our appropriators on this subcommittee have done their job, and they have brought the bill here. It is now, as we consider it under an open rule on the appropriations bill, one that will come to the floor so that any Member can provide any amendment they so desire that is germane to this bill for consideration, and that becomes the process of a decision of whether 218 Members of this body decide in favor of that amendment or not.

It is not up to the Committee on Rules to sort through each and every personal agenda item that may come up through the rules hearings for deliberation. This is a fair and open rule that is before this House for decisions today and as long as it takes to complete this appropriations bill.

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

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

I would just respectfully disagree with the gentleman, that it is the job of the Committee on Rules to go through and to analyze each and every amendment and every proposal that every Member of this House, Republican and Democrat, brings before the committee. Everybody in this Chamber should have the right to be able to go to the Committee on Rules and have

their amendment considered, be given fair consideration. All of us were elected. We represent the same number of people; all of us have the same right to be able to do that.

I would also say to the gentleman when he mentioned about the budget, to the best of my knowledge, Congress has not approved a budget yet, notwithstanding the fact that the Republican Party controls both the House and the Senate. So we are kind of operating under kind of imaginary budget caps that the Republican Party has decided to put into place. I would again say that to the extent that there is a shortfall here, it is because the gentleman and his leadership and his party have chosen to devote these resources to something else, namely, tax cuts for very wealthy people in this country.

I think that is the wrong choice. I think it would be better to invest some of that money in a strong infrastructure. I think it would be better for our economy, and it would create more jobs.

Mr. Speaker, I yield 5 minutes to the gentleman from Wisconsin (Mr. OBEY).

□ 1600

Mr. OBEY. Mr. Speaker, I intend to vote against the previous question on the rule. I intend to vote against the rule. And if the House does what I think it is going to do on this bill in the next 2 days, I intend to vote against the bill as well.

The gentleman from New York (Mr. REYNOLDS) indicates that the Committee on Appropriations has done its job. That is correct. But what is happening now, the Committee on Appropriations is trying even though we are at the end of the fiscal year and even though many of the programs that we are supposed to appropriate money for have not yet been authorized because of failure of the authorization process, the Committee on Appropriations is going to see its product shredded because of the inability of the authorizing committee and the White House and the majority leadership in both the Senate and the House to get together on a reasonable compromise, which hopefully would also include Members of the minority.

And so now what is happening is that a rule is being produced which is theoretically an open rule, but which in reality will result in about 80 percent of this bill being shredded. The carcass of this bill will then go to conference, and in conference the Committee on Appropriations will be asked to reconstruct the legislation which will have been shredded on the House floor. No individual member will have any input into what the final product that comes out of conference will be.

The reason we have a Committee on Rules is to avoid this kind of chaos. The reason we have a Committee on Rules is to bring adult supervision to the House floor from time to time, and the fact is that the Committee on Rules is being derelict in its duty and

the House leadership is being derelict in its duty when it does not step in to resolve what Dick Bolling used to call these dung hill fights between different committees. Dick Bolling used to bemoan the fact that Members of this House seemed to think that they had a greater obligation to their committee than they do to the House as a whole. They do not. At least they should not.

We were not elected to be members of the Committee on Appropriations or members of the Committee on Transportation and Infrastructure or members of the Committee on Rules. We were elected to be Members of the House of Representatives, and it is our job to sometimes defend the House against the arbitrary actions of individual committees. And when the Committee on Rules does not step in to guarantee that, then the result is chaos.

That is what we are going to see here today. We are going to have three different factions of the majority party each trying to impose its own will by taking advantage of the fact that the Committee on Rules did not do its job. So in protest, I mean, we only have about 2 weeks before the end of the fiscal year. We only have passed one appropriations bill. And in my view it is this lack of leadership which has resulted in this miserable record of performance or rather miserable record of nonperformance on the part of the House of Representatives on appropriations issues.

The Committee on Appropriations on both sides of the aisle has worked and worked and worked to try to overcome an inability to perform on the part of other committees, and yet the product that the committee has tried to produce is going to be shredded today because the leadership did not pull people in and knock their heads together to get them to act like adults. That is nothing new around here, but I wish to God it would not be routine.

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

Mr. Speaker, first of all I want to make sure that there was no question in my comments earlier as the gentleman from Massachusetts (Mr. MCGOVERN) brought forth some thought.

I believe it is for the Committee on Rules to listen to each and every Member on its amendments. What I said was that the Committee on Rules, that it was not responsible and necessary to give every member a waiver on everything they wanted as they came up there, which you well know.

A couple of things that become important also while I listen to both the ranking member of the Committee on Appropriations as well as the minority member managing this rule, and that is that appropriations has a very unique aspect here. They can move privileged measures right to the floor without any rule. Now, I know the ranking member of the Committee on Appropriations knows that because

last year the Committee on Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies came through exactly that way, as a privileged measure that was regular order and never had a rule, and it came right to the floor as they have that opportunity here in the House of Representatives.

In fact, as we look at this bill, this bill started with the aspect that the Committee on Appropriations was going to move it to the floor as a privileged measure that would not require a rule at all. And it was also, as I understand, that the Committee on Appropriations did not want to accommodate waivers, they did not want waivers on this bill, so they elected that the Committee on Rules would come to play, make its decisions and bring the bill to the floor without those waivers under an open rule where every single Member of this body can introduce any germane amendment he or she so desires. And that is what will happen today if this rule is passed and we are able to move on to the appropriations matter.

When we look at the discussion, and there is a debate. I remember when we had a discussion saying I want to add back all this stuff and I want to raise taxes to do it, as the minority ranking member of the Committee on Appropriations brought a measure before this House. I respect his ability to bring that amendment. I also think we were fortunate that it was defeated so we did not raise taxes on the American people. But the fact is there was the opportunity to have that vote after the debate and the decision was not to raise taxes.

I accept those in the minority who want to raise taxes to spend. It is a fact of life over some of the policies that this body had when the other party was in power. But the fact is that we are holding the line on spending. We are making difficult choices. And today as we move this appropriations bill to the floor, it gives everyone ample opportunity to amend it with germane amendments how they see fit.

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

Mr. MCGOVERN. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. I found the gentleman's response interesting, Mr. Speaker. He starts to talk about taxes. This bill and my position on it has nothing whatsoever to do with taxes. It has everything to do with the fact that the leadership on your side of the aisle will not meet their responsibility in choosing which individual Members they are going to discipline in order to bring a coherent piece of legislation to the floor. This has nothing to do with tax levels.

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

Mr. Speaker, I must recall it has only been about a half hour when I listened to my colleague, the gentleman from Massachusetts (Mr. MCGOVERN), who

brought his viewpoint to the floor that said there is not enough money in this thing because there was a tax cut and, therefore, we have got to increase taxes in order to have more money to spend. And so while I did not necessarily hear that from the gentleman today, the ranking member led the debate on increasing taxes so we could put more stuff back into programs that you put forth in a line by line fashion that you wanted back from money.

That was not today but you certainly brought that forth and it was something that you very much wanted to bring forth and we have accommodated that opportunity. But today the Member managing this rule on the minority side did bring forth the fact that he did not see the goals of what he wanted to see in a transportation bill because the tax cut did not allow him to have that.

Again, I want to remind my colleagues that we have ample opportunity for every Member to offer whatever amendment they want that is germane to this bill; and I am sure we will see many of those in the forthcoming hours on this Committee on Appropriations item.

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

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

Mr. Speaker, let me clarify to the gentleman, the point I was trying to make is your priorities are all messed up. The bottom line is there is a real need out there, all across this country, even in your State, for more transportation funding, more public transportation funding, more support. It is essential for economic growth. It is essential for job creation and you are short-changing it, and those are your priorities, and I think they are messed up.

Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

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

Mr. ANDREWS. Mr. Speaker, I thank my friend for yielding me time.

I wanted to set the record straight, Mr. Speaker, on this discussion of taxes that we keep hearing about, my friend from Wisconsin, when he raised taxes. And he can correct me if I am wrong about this, but every time he has attempted to make an amendment in order on these appropriations bills, in committee and here, and when he was permitted to have an order, a vote that would have amended the budget resolution, every time, if I am not mistaken, the bottom 99 percent of American families would not have had their taxes raised at all.

Mr. Speaker, I ask the gentleman from Wisconsin (Mr. OBEY) if that is correct.

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

Mr. ANDREWS. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Speaker, that is absolutely correct. The majority knows it

but they try to hide it at every opportunity because they do not have the guts to take the issue on directly.

Mr. ANDREWS. Reclaiming my time, it is also my understanding that to the extent that we have talked about restoring the tax rates that were in effect in 2001, a tax code which by the way created 22 million new jobs in the last decade, that the gentleman from Wisconsin's (Mr. OBEY) proposal simply reclaimed a portion of the tax cut that people in that top 1 percent would have received.

In other words, even under the gentleman from Wisconsin's (Mr. OBEY) proposals, they would get a tax cut because the amount reclaimed was less than the amount received.

Mr. Speaker, I ask the gentleman from Wisconsin (Mr. OBEY) if that is correct.

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

Mr. ANDREWS. I yield to the gentleman from Wisconsin.

Mr. OBEY. Mr. Speaker, that is also absolutely correct.

Mr. ANDREWS. Mr. Speaker, I also want the RECORD to reflect this choice: As our constituents sit in traffic tonight, as they cannot get home because of suburban sprawl and the lack of mass transit, as they cannot deal with the many, many problems they have, the majority has made a choice and its choice is a huge tax reduction for the top 1 percent of the people in the country or an honest choice which we would make which we would say, the top 1 percent could do without that huge tax reduction. Let us not raise taxes on the other 99 percent and meet the needs of this country.

That is the real choice. I understand why the majority wants to obscure it because they are making the wrong choice.

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

Let me conclude again by saying what I said at the beginning of this debate and that is that it is unfortunate that we are dealing with such an inadequate allocation. Our cities, our towns, our States deserve much better than this. This reflects poorly on the priorities of the leadership of this Congress. This has to change. Our communities cannot afford to be short-changed on important transportation dollars.

This undercuts their economic development. This undercuts job growth. We need to do much better.

Mr. Speaker, I yield back the balance of my time.

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

Mr. Speaker, there is no question when we look at our infrastructure and our roads and bridges and our transit systems and our ports and our airports, there is always an additional need for money. That is why we have invested so much as what we have done in our trust funds as well as annual appropriations. But there also comes a time

where you cannot just keep taxing and spending on the aspect of wanting to provide a big government to the entire country on every single item, every single day.

It requires some of the tough looks of where we have to hold some line item spending. It comes to looking at a budget, and 302(b) allocations that set forth those tough decisions that both the appropriators and then this body have to do. Just as the difficulty that everyone knows we have in bringing forth the final solution for TEA-LU.

If it was just an unlimited big spending picture of what some of the failed liberal policies of the 40 years before this majority came into power, I guess you could keep that tax and spending going. But the American people have also said a couple of things: One, we need to hold the line on spending. We need to hold the line on taxes, and we also need to look at making some of those tough decisions that we have today as this appropriations bill comes to the floor of the House after the vote on the rule.

Mr. Speaker, I have said it time and time again, it is an open rule. It is one that gives every single member of this body an opportunity to bring any germane amendment to the floor for consideration on their amendments by this body, and I am sure upon the completion of the hard work that this body will do over the next several days on this bill we will get the best bill possible to bring forth as a completed appropriations bill that we have as a rule before us.

□ 1615

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore (Mr. SIMPSON). The question is on ordering the previous question.

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

Mr. MATHESON. 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.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 235, nays 170, not voting 28, as follows:

[Roll No. 451]

YEAS—235

Abercrombie	Berman	Bonilla
Akin	Biggart	Bono
Andrews	Bilirakis	Brady (PA)
Baca	Bishop (GA)	Brown (SC)
Bachus	Blumenauer	Brown, Corrine
Barton (TX)	Blunt	Brown-Waite,
Bass	Boehner	Ginny

Butterfield	Houghton	Pastor	Hooley (OR)	Moore	Sanders
Buyer	Hoyer	Payne	Hostettler	Moran (KS)	Sandlin
Calvert	Hunter	Pelosi	Hulshof	Murphy	Schiff
Camp	Hyde	Pence	Inslee	Musgrave	Sensenbrenner
Cantor	Israel	Pickering	Isakson	Napolitano	Shays
Capuano	Issa	Pombo	Jenkins	Neugebauer	Shimkus
Cardin	Istook	Portman	John	Northup	Shuster
Carter	Jackson (IL)	Pryce (OH)	Johnson (CT)	Norwood	Simmons
Clay	Jackson-Lee	Putnam	Johnson (IL)	Nussle	Smith (WA)
Clyburn	(TX)	Quinn	Jones (NC)	Obey	Snyder
Cole	Jefferson	Radanovich	Kaptur	Ose	Stearns
Collins	Johnson, Sam	Rangel	Keller	Paul	Stenholm
Cooper	Jones (OH)	Regula	Kelly	Pearce	Strickland
Cox	Kanjorski	Rehberg	Kennedy (MN)	Peterson (MN)	Stupak
Cramer	Kennedy (RI)	Reyes	Kildee	Peterson (PA)	Sullivan
Crane	Kilpatrick	Reynolds	Kind	Petri	Tancredo
Crenshaw	King (IA)	Rodriguez	Kucinich	Pitts	Tanner
Cubin	King (NY)	Rogers (KY)	LaHood	Platts	Taylor (MS)
Culberson	Kingston	Rohrabacher	Lampson	Pomeroy	Taylor (NC)
Cummings	Kirk	Ros-Lehtinen	Latham	Porter	Terry
Cunningham	Kline	Rothman	Lewis (KY)	Price (NC)	Tiahrt
Davis (AL)	Knollenberg	Royal-Aillard	LoBiondo	Rahall	Tierney
Davis (FL)	Kolbe	Ruppersberger	Lofgren	Ramstad	Toomey
Davis (IL)	Lantos	Rush	Lucas (KY)	Renzi	Turner (TX)
Davis, Tom	Larsen (WA)	Sabo	Lynch	Rogers (AL)	Turner (MI)
Deal (GA)	Larson (CT)	Saxton	Majette	Rogers (MI)	Udall (CO)
DeGette	LaTourette	Schakowsky	Marshall	Ross	Udall (NM)
Delahunt	Leach	Scott (GA)	Matheson	Royce	Upton
DeLauro	Lee	Scott (VA)	McCollum	Ryan (OH)	Vitter
DeLay	Levin	Sessions	McGovern	Ryan (WI)	Walden (OR)
Diaz-Balart, L.	Lewis (CA)	Shadegg	McIntyre	Ryun (KS)	Wamp
Diaz-Balart, M.	Lewis (GA)	Shaw	Mica	Sanchez, Linda	Wu
Dicks	Linder	Sherman	Michaud	T.	
Dingell	Lipinski	Simpson	Miller (NC)	Sanchez, Loretta	
Dooley (CA)	Lowe	Skelton			
Doolittle	Lucas (OK)	Smith (MI)	Ackerman	Engel	Owens
Doyle	Maloney	Smith (NJ)	Baker	Gephardt	Schrock
Dreier	Manzullo	Smith (TX)	Balleger	Greenwood	Serrano
Dunn	Markey	Solis	Blackburn	Hastings (FL)	Sherwood
Ehlers	Matsui	Souder	Boehert	Johnson, E. B.	Slaughter
Emanuel	McCarthy (MO)	Spratt	Bonner	Klecza	Tauzin
Eshoo	McCarthy (NY)	Stark	Burton (IN)	Langevin	Towns
Everett	McCotter	Sweeney	Cannon	McInnis	Whitfield
Farr	McCrery	Tauscher	Conyers	Miller (FL)	
Fattah	McDermott	Thomas	Crowley	Nethercutt	
Feeney	McHugh	Thompson (CA)			
Ferguson	McKeon	Thompson (MS)			
Foley	McNulty	Thornberry			
Frank (MA)	Meehan	Tiberi			
Franklinhuysen	Meek (FL)	Turner (OH)			
Frost	Meeks (NY)	Van Hollen			
Gallegly	Menendez	Velázquez			
Garrett (NJ)	Millender-McDonald	Visclosky			
Gilchrest	Miller (MI)	Walsh			
Gillmor	Miller, Gary	Waters			
Gonzalez	Miller, George	Watson			
Goodlatte	Mollohan	Watt			
Goss	Moran (VA)	Waxman			
Granger	Murtha	Weiner			
Green (TX)	Myrick	Weldon (FL)			
Grijalva	Nadler	Weldon (PA)			
Gutierrez	Neal (MA)	Weller			
Gutknecht	Ney	Wexler			
Harman	Nunes	Wicker			
Hastings (WA)	Oberstar	Wilson (NM)			
Hefley	Olver	Wilson (SC)			
Henger	Ortiz	Wolf			
Hinchee	Osborne	Woolsey			
Hinojosa	Otter	Wynn			
Hobson	Oxley	Young (AK)			
Hoeffel	Pallone	Young (FL)			
Hoekstra	Pascarell				
Honda					

NAYS—170

Aderholt	Capito	Evans
Alexander	Capps	Filner
Allen	Cardoza	Flake
Baird	Carson (IN)	Forbes
Baldwin	Carson (OK)	Ford
Barrett (SC)	Case	Fossella
Bartlett (MD)	Castle	Franks (AZ)
Beauprez	Chabot	Gerlach
Becerra	Chandler	Gibbons
Bell	Choccola	Gingrey
Berkley	Coble	Goode
Berry	Costello	Gordon
Bishop (NY)	Davis (CA)	Graves
Bishop (UT)	Davis (TN)	Green (WI)
Boozman	Davis, Jo Ann	Hall
Boswell	DeFazio	Harris
Boucher	DeMint	Hart
Boyd	Deutsch	Hayes
Bradley (NH)	Doggett	Hayworth
Brady (TX)	Duncan	Hensarling
Brown (OH)	Edwards	Herseth
Burgess	Emerson	Hill
Burns	English	Holden
Burr	Etheridge	Holt

the Congressional pay raise for 2005 and would like the record to reflect that view.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ISTOOK. 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. 5025, making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2005, and for other purposes, and that I may include tabular material on the same.

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

There was no objection.

TRANSPORTATION, TREASURY, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT, 2005

The SPEAKER pro tempore. Pursuant to House Resolution 770 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5025.

□ 1640

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 consideration of the bill (H.R. 5025) making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2005, and for other purposes, with Mr. GILLMOR in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Oklahoma (Mr. ISTOOK) and the gentleman from Massachusetts (Mr. OLVER) each will control 30 minutes.

The Chair recognizes the gentleman from Oklahoma (Mr. ISTOOK).

Mr. ISTOOK. Mr. Chairman, I yield myself such time as I may consume, and I am pleased to present to the House the appropriations bill H.R. 5025, making appropriations for the Departments of Transportation and Treasury, and independent agencies for fiscal year 2005.

Mr. Chairman, this is one of the most fiscally responsible bills that we have considered this year. It is a large bill. It is a diverse bill. It includes funding for the Department of Transportation, the Treasury Department, the General Services Administration, the Executive Office of the President, National Archives, Office of Management and Budget, Office of Personnel Management and many other agencies that are

NOT VOTING—28

Baker	Engel	Owens
Balleger	Gephardt	Schrock
Blackburn	Greenwood	Serrano
Boehert	Hastings (FL)	Sherwood
Bonner	Johnson, E. B.	Slaughter
Burton (IN)	Klecza	Tauzin
Cannon	Langevin	Towns
Conyers	McInnis	Whitfield
Thomas	Miller (FL)	
	Nethercutt	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). There are 2 minutes remaining in this vote.

□ 1641

Messrs. JENKINS, SULLIVAN, MARSHALL, GIBBONS, Mrs. JOHNSON of Connecticut, Mr. MICA, Ms. KAPTUR, Mr. RAMSTAD, Ms. HOOLEY of Oregon, Mr. ADERHOLT, Ms. MCCOLLUM, and Mr. FOSSELLA changed their vote from "yea" to "nay."

Messrs. LIPINSKI, FRANK of Massachusetts, COOPER, CLYBURN, and Ms. WATERS changed their vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. SLAUGHTER. Mr. Speaker, I was unable to be present for rollcall vote Nos. 444, 445, 446, 447, 448, 449, 450, and 451. Had I been present, I would have voted "aye" on rollcall vote Nos. 446, 447, 448, and 449. I would have voted "nay" on rollcall vote Nos. 444, 445, 450, and 451.

PERSONAL EXPLANATION

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, this afternoon I was meeting with Veteran constituents and upon the vote being called for the previous question for the H. Res. 770, I hurriedly ran from the office to the floor. I had intended to vote against the order of previous question as I did last year but in my haste, inadvertently voted in its favor. I oppose

critical to the functioning of our Federal Government.

This measure is also one that includes a number of government-wide general provisions that are there to facilitate efficiency and effectiveness in the day-to-day functions of large and small Federal agencies.

Mr. Chairman, we have a lot of budget constraints this year. In examining the budget picture for this particular bill, it is important to note that this bill is within the budget that has been produced by this House of Representatives and the allocation that has been provided to this subcommittee.

Of course, the Congress, working with the President and his administration, has rightfully put a priority on spending for the ongoing conflict in Iraq and the war on terror. At the same time, we have a serious Federal deficit. These have forced this body and our Committee on Appropriations and our subcommittee to make many difficult and challenging choices. This bill reflects the difficulty of those choices.

In fact, if you look at this bill, Mr. Chairman, and compare it with last year's parallel bill, you will find that this particular measure is \$3 billion below the amount that we spent on the same accounts last year. There are reasons that it is not a pure apples-to-apples comparison, but, nevertheless, the bill is below what the similar funding was for last year. That reflects, again, the priority choices and the tough choices we have made.

So we will hear, during debate upon this measure, many people say, "Oh, I wish we had more money for this program or that or some other." But the answer is that we do not. We are in deficit spending already, and this is about as fiscally responsible a bill as you will find before this body this year.

Overall, the bill provides a total of \$89.9 billion for the Department of Transportation, for the Treasury Department, the Internal Revenue Service, highways, transit, rail programs, seafaring programs, and the heart of the executive branch, including the White House itself.

□ 1645

Overall, for salary and expense accounts, the bill does provide increases, some 2.6 percent, but that is within the context of a bill that overall is \$3 billion less than the bill last year, so many agencies will have to do some belt tightening. We have tried to give them the maximum flexibility to manage those resources.

I appreciate the fact that the gentleman from Florida (Chairman YOUNG) did not have the funds he would have liked to have had to put into highways and other forms of transportation, but he gave us a fair allocation and I am grateful for it. Not only is it \$3 billion below last year's spending on these accounts, it is below the amounts requested by the President in his budget.

There were some highly controversial provisions we did not include. Some

Members said if you can put a provision in the bill to end a process known as dumping, which has to do with reparation payments to industry to offset unfair trade practices, then you can grab over a billion dollars to put back into the bill. That would not have been good because whatever Members' position on dumping is, it has not passed the House and we cannot assume we will have the money.

Despite the budget constraints we have, I am pleased we have been able to improve the most important part of our transportation network, and that is funding for highways. The \$34 billion in this bill for highway funding is a billion dollars above the funding level for highways last year. So in the context of a bill that itself is \$3 billion below last year, when we are still able to improve highway funding, that shows we have addressed priorities and tried to put the money where it is most important.

That money for highways is going to be good news for the economy because each billion dollar investment is estimated to create some 40,000 jobs.

There is also some confusion in the context of this bill, Mr. Chairman, because we have a two-stage process. We have still pending in the conference committee a surface transportation highways and transit reauthorization bill. I do not want to confuse this bill with that. The reauthorization bill establishes a framework for spending transportation dollars, but this bill actually provides the money. We do not have a new framework created, so we have had to assume the old framework remains in place, but we are going to have some controversy over that because we have not been able to achieve passage into law of a highway reauthorization bill. We have some technicalities, some rules of this House, and I know many Members are going to come forward and raise points of order. They are going to say you have to strike this part out of the bill because we have not authorized it.

Well, we have been waiting a year for an authorization bill which has not happened. We had to do our work anyway. Some Members may want to pick the bill apart and say you are putting money into something that is not authorized. Under the rules of the House they may be successful in doing that. But I want to reassure every Member of this body that we are going to repair those things when it gets to conference. We are going to have the same kind of responsible bill that the Committee on Appropriations has produced that comes out of conference regardless of how Members may want to pick at it with parliamentary tactics on the House floor today.

It is not the fault of the Committee on Appropriations that a reauthorization measure has not passed as the rules of the House dictate it should have been a year ago.

Looking at some other details of the bill, the FAA, the Federal Aviation Ad-

ministration, will receive a 3 percent increase for its operations, less than they requested, but more than the government-wide average for nondefense, nonhomeland security programs. That again is because we have put priority into aviation funding, just as we have in highway funding, and we have put cuts in place elsewhere in the bill to compensate for that.

The bill meets the aviation funding guarantees mandated by authorizing legislation which has passed this body. It provides the budget request for the capital investment programs of the FAA and grants-in-aid for airports all across America.

The essential air service program, which I am not personally fond of, but one which is important to many Members of this body, receives the same funding as it did in fiscal year 2004. And there is \$20 million for the small community air service program.

Amtrak is always a point of controversy in this House. The bill proposes \$900 million for Amtrak, the same amount suggested by the administration in their budget proposal, and I believe it is a responsible number for Amtrak because Amtrak still has not resolved its long-term problems, and we have not developed the kind of partnerships that we need with States and communities that want Amtrak service investing in Amtrak service. The administration believes and I agree that realistic Amtrak reform has to be enacted before we start putting more money into that passenger rail service.

The Secretary of Transportation and the President and his administration believe the amount in this bill is sufficient to keep that rail service operating in the next year, and I agree with them.

Funding for transit in the bill is essentially at the level of fiscal year 2004, also the same as the administration requested, but we have done some adjustment inside of the numbers. Within the overall total, we have put more of the transit funding into the formula grant program that goes into every community in every State in the country on a formula basis. That benefits everyone. We put more money through the formula and less in the so-called new starts program which is fixed guideway and light rail programs, and so forth, which only benefit a handful of communities. We have tried to put the transit funding more than ever before into a formula that benefits everyone, not just select areas of the country.

I want to make one more comment about the new starts program. We do not know how much money is going to be available over the next 5 years to fund these expensive rail systems that a lot of communities want and often do not do the necessary cost-benefit analysis. The Department of Transportation Inspector General told us this year there are far more systems being proposed than we will ever have money to pay for. The requests exceed the resources by billions of dollars, so this

bill takes a prudent step to slow down that program, put money instead into the formula grants instead of making some decisions that we might regret tomorrow on how we prioritize the new starts program. But the bill does fund all of the existing full funding grant agreements on new start programs that are between different communities and the Federal Transit Administration.

In the Treasury Department of this bill, which includes the Internal Revenue Service, we essentially have funded it at the same level of fiscal year 2004. Some of the proposals we believe need further refinement. New initiatives such as the IRS initiative to increase its hiring to improve collections are too financially ambitious for the budget climate we have.

One of the largest increases in the bill, 12.7 percent, goes to what is known as FinCEN, the Financial Crimes Enforcement Network. It is part of the Department of Treasury and it is part of counterterrorism activities, trying to disrupt the financial basis of terrorists.

When we look at another part of the bill, the Executive Office, the President, the White House and the offices that work with the White House, it is actually a little below last year's because we have reduced contract programs. The bill includes funding for the majority of the construction program of the GSA, General Services Administration. That is the landlord for the Federal Government. But even though it includes the majority of the GSA construction program and GSA says it has something like a \$7 billion backlog, we have shaved back those requests to meet our budget allocation.

All 12 border stations that are proposed in the budget request are fully funded because of the priority that we have given to homeland security. A more complete summary of all of the funding levels in the bill, as well as significant provision, is in the committee report at pages 3 and 4, and I direct Members to those pages.

Mr. Chairman, a final comment before I close my debate for now. My final comment is about the messiness that I know we are going to experience with the points of order and money in the bill being stricken. We are probably going to have to offer some amendments on what do we do with the money. I would just as soon have it go to pay the national debt, but in our protocol that is not how it works in this process. So if some money is stricken on points of order, I will offer the necessary amendments to park that money into some of the major accounts with the understanding that when we get to conference we will be overcoming the parliamentary problems of those points of order and restoring that money to the transportation programs which I think some people are going to try to take it from with their points of order.

I thank the gentleman from Massachusetts (Mr. OLVER), our ranking

member. The gentleman presents his personal views and the views of the minority tenaciously and effectively and is good to work with. I appreciate that and his no-nonsense approach to things.

I also appreciate our staff that has worked so well and will reiterate a thank you to them later on before we close this debate.

This is a good, solid bill. It is responsible. It merits and deserves the support of every Member of this body, and I ask that Members support it when we come to passage of the bill.

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

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

Mr. Chairman, I would like to thank the gentleman from Oklahoma (Chairman ISTOOK) for working so hard to get this bill to the floor. I suspect from the comments the gentleman has made and what I know about what is likely to go forward today, he is going to be working even harder to keep this bill moving in the days ahead.

I would also like to thank the staff on both sides of the aisle for their work on the bill: On the minority side, Mike Malone and Bob Bonner from our appropriations staff; and on the majority side, Rich Efford, Cheryl Tucker, Leigha Shaw, and Kurt Dodd. I may be missing somebody, but at least those for the majority. This bill has become more complex than any of us thought it would, and I appreciate all of their efforts and all of the efforts that they will be asked to make.

As Members know, the Congress has not adopted a budget resolution for fiscal year 2005. Instead, the deemed resolution under which the House is operating and which placed tax cuts number one among all priorities, resulted in a severely constrained 302(b) allocation for this subcommittee, along with several other subcommittees of the Committee on Appropriations.

I give credit to the gentleman from Oklahoma (Mr. ISTOOK) to distribute the pain broadly, if not totally evenly, and for making significant adjustments during the subcommittee and full committee deliberations, particularly in regard to hiring additional air traffic controllers in anticipation of the impending wave of controller retirements which everyone except the Department of Transportation seems to know is coming, and in regard to better funding the Financial Crimes Enforcement Network, one of the Treasury Department's front lines against terrorism, yet the subcommittee's abysmal allocation precluded us from fixing several more serious problems with the bill.

On the transportation side, Mr. Chairman, every major account in the Department of Transportation is underfunded. The bill only provides \$900 million for Amtrak, which I would say parenthetically, to parse the chairman's words, is another program of which he is not particularly fond. At this level there should be no surprise

next spring when Amtrak must curtail services. And furthermore, as critical maintenance is further deferred, we risk serious to catastrophic accidents on the very trackage for which Congress has direct responsibility in our budgetary process.

Transit programs are also underfunded. The new starts transit account is \$300 million below the President's request.

□ 1700

There are so many new urban areas growing in this country, areas that are rising in population at substantially larger than the average population increase year by year in this country where it is becoming totally unthinkable to simply add additional lanes of highways and where more and more of them are thinking about how to use bus transit, rail transit, various kinds of programs, under the transit administration; and the new starts transit account is \$300 million below the President's request to deal with those needs.

The FAA's operations account is well below the President's fiscal year 2005 request and the FAA facilities and equipment account is nearly \$400 million below the fiscal year 2004 enacted level. The two highway safety agencies, the Motor Carrier Safety Administration and the National Highway Traffic Safety Administration, taken together, are cut by 25 percent below the President's request. Those are two major highway safety programs. They are not terribly large, but they are cut from the President's request by 25 percent, one much higher than the other.

Even the Federal Highway Administration, which is up 1.5 percent from the enacted fiscal year 2004 budget, is underfunded because 1.5 percent is well below the standard overall inflation rate. Fifteen percent of our whole economy comes from the transportation industry, broadly taken, and the chairman has already pointed out that construction in transportation infrastructure produces, he used the number 40,000 jobs per \$1 billion. My understanding is that the Department of Transportation typically uses 45,000 jobs per \$1 billion of construction, but we do not need to quibble about that. I will accept his number and he probably would accept my number as being in the ballpark.

So that moneys in the transportation budget and in the Federal highway budget, particularly vitally important for infrastructure improvements all over the country, construction in every mode of transportation costs more every year as the population and congestion increase.

I do not understand what the benefit is to us as individuals in our districts and to the people of America in general cutting below inflation, at least below inflation and in some cases far beyond below inflation, of programs in the transportation area.

On the Treasury portion of this budget, the IRS tax law enforcement account is \$286 million below the President's request and nearly half a billion

dollars below what the IRS oversight board says is needed to properly enforce tax laws in fiscal year 2005.

Since we have had sworn testimony that moneys expended properly on tax law enforcement brings in on average a six-to-one return, thereby the proper use of \$286 million would bring in nearly \$2 billion of additional revenue. In effect, we are giving tax cuts to tax cheaters by not fully funding the tax law enforcement request that the President made.

Secondly, on the Treasury portion, language is included that bars the use of matricula consular identification cards, language which is harmful to homeland security and the Department of Treasury's fight against terrorist financing. I am hopeful that that language will be taken out of this bill before it becomes law.

On the floor today and in conference, I hope we will be able to rectify these problems and have strong bipartisan support for the end product that we hope to produce as expeditiously as possible.

Mr. Chairman, I yield 5 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentleman's courtesy in permitting me to speak on this bill, and I do appreciate the hard work that the subcommittee has been grappling with. Clearly, there is not enough money that is allocated to meet all of the varied transportation interests that we have. I also appreciate that this is a dynamic process and that there is going to be probably more give and take on top of the give and take that has occurred.

I would like to speak briefly on behalf of three simple points. First, I heard the chairman talk about the new starts being oversubscribed and talked about how there is more in the pipeline than is likely to be funded at current levels for some time. I agree wholeheartedly, but I would think that that is a signal, a signal about the popularity and the importance of these programs across the country, the way the chairman a moment ago talked about the need for more highway funding because of the need for highways.

We have an extraordinarily popular and important program for communities across the country, including some that may not leap to mind for people thinking about multimodal transportation systems, like in Houston, Texas, where the voters there just this last fall, actually against formidable political opposition, the voters decided that they were going to extend that program. It simply as yet does not keep pace with demand, but we have a broad and growing range of interest around the country.

I would suggest that unlike the highway projects which are basically an entitlement that are not subjected to rigorous analysis in terms of cost-benefit, I know of no projects in the Federal arena in terms of major capital outlay

that are subjected to more aggressive cost-benefit analysis than what we do now to the new starts. I think they meet the test. They are in community after community proving to be the most cost-effective ways of reducing congestion, far more effective than spending a similar amount simply widening roads as has been the case in the past. That is why it is popular. That is why it has been supported by Republican and Democratic administrations. That is why we see it in communities large and small across the country.

I am concerned, because I know that there has been some report language that talks about how to deal with the weighing of land-use considerations. I would respectfully suggest that this is an area that I think the FTA can, in fact, improve its performance; but it is rather, I would suggest, looking at the value of land use rather than to undervalue land-use criteria.

What community after community is finding is that if you do not look at supportive land uses around transportation facilities, without proper land use you can have them be ineffective, you can have a road project that is basically producing congestion the day it is opened if you are not careful with what the land uses are there. We ought to strengthen the land use provisions, not weaken them. That was part of the original ISTEA. That was part of TEA-21. That is part of what is going through the process now if we ever reauthorize the Surface Transportation Act. This is in TEA-LU.

I would hope that we could work with the FTA to balance, to strengthen, to give more of these choices and, frankly, to provide some weight to the economic development potential of these activities. My concern is at the FTA now there is not enough weight for the economic development potential of transportation. I have seen it, and I can give example after example where it has arisen. I would hope that we are able to provide proper weight for it.

The final point that I wanted to raise deals with Amtrak. I am concerned that the Republican leadership, with their Rules Committee, that we have not been able to protect the spending under Amtrak and maybe subject it to a point of order.

This continues an ongoing drama we have here where the administration proposes to undercut it, where there are proposals here in the House to chop it down even further, but it is always restored because it is something the public understands is an essential part of our transportation infrastructure. It is critical in corridors like in the Northeast. It is something that we have historically starved and underfunded. We have spent less in total of Amtrak's entire history than we do in 1 year of highway spending.

I would hope that we not get involved with that charade this time where we go through the motions of cutting Amtrak funding or even eliminating it, because the American public will not

stand for it. It will ultimately be reinstated, but it undercuts the effective administration that we see with the new director, Peter Gunn, who is the best I have seen since I have been in Congress. They deserve better and so does the rail passenger public.

Mr. OLVER. Mr. Chairman, I yield 5 minutes to the gentleman from Maryland (Mr. HOYER), the distinguished minority whip.

Mr. HOYER. I thank the gentleman from Massachusetts for his generous yielding of time.

Mr. Chairman, I would like to express my concern about the funding in this bill. I realize the chairman's hands are tied by the allocation given to the subcommittee which is in turn driven by the budget resolution passed by the House earlier this year, but not passed by the Congress. I thank Chairman YOUNG and Ranking Member OBEY for doing the best they could with the limited resources available to this committee, but this committee did not have sufficient funds to meet its responsibilities.

This highlights the fact that the decisions we make about the budget and taxes have real consequences. With this bill today, we unfortunately see one major result of our decisions. We have failed to live up to the commitments we made to our constituents.

I am, however, pleased in certain instances that we have followed the President's recommendation. The FDA consolidation which we are about has been included in the bill, an extraordinarily important effort that a bipartisan effort of the administration and the Congress has pursued. These funds will go a long way in helping to relocate FDA employees from their current substandard facilities into modern, state-of-the-art facilities. The consolidation would bring to an end the practice of extending costly leases for various FDA offices throughout the region. We in fact will save money as a result of this.

On the other hand, I am deeply disappointed that the bill does not provide any election reform grants. We have funded the commission. That is appropriate. We had a press conference this morning with the president of the National Association of Secretaries of State. One of the most important things that remains left to do on election reform is revising the statewide election system of recording registrants and having those registrants available to each and every precinct. The grants that are due under the authorization are not included in this bill.

The administration, in my opinion, Mr. Chairman, must show a stronger commitment to election reform, including calling for more funding, if this Nation is to avoid a repeat of the 2000 election debacle. We will not do anything between now and November 2 with this money; but very frankly the registration that we require in the bill be a statewide system must be online

by January of 2006. That is a very brief period of time, some 14 months from now.

□ 1715

And if we do not fully fund the authorization, I fear the States will not meet that deadline. We made a promise to the States that the efforts to address the most serious deficiencies in their electoral systems would not turn into another unfunded federal mandate. By failing to fund fully the commitment of the authorization bill, we have mandated something and we have not helped pay for it.

Also, Mr. Chairman, I remain concerned that the proposed funding for tax law enforcement is insufficient to adequately enforce compliance and make our tax system fair and efficient. I am also disappointed there are no funds to reimburse small airports in the Washington region for the losses incurred when the Federal Government shut them down. I have had extensive discussions with the chairman on this issue. There is some language in the bill that hopefully will make this a conferencable item, but I will tell the chairman once again and I will tell the chairman of the caucus it is ironic that small business people who have invested and taken a risk in being entrepreneurs, as the majority party says it supports, are left hanging in the wind by governmental action and, through no fault of their own, none, zero, find themselves one of the few people who have not been reimbursed for the losses they have incurred. That is, I think, ironic and wrong.

While the bill recognizes that the Department of Transportation should consider ways to reimburse general aviation, the failure to provide funds will only leave small airports, specifically College Park, Potomac, and Washington Executive, dangling on the brink of financial ruin. We should do more for general aviation and small business, what we did for the airlines, large airports, and the insurance industry in the aftermath of the terrorist attacks, help ease the burden our actions have caused. Those actions were caused by terrorists.

I urge the chairman to include funds for general aviation reimbursement as we move forward to make fair restitution to the small airports.

Finally, Mr. Chairman, the failure to provide funds for DOT headquarters is short-sighted, in my opinion, and leaves the Department of Transportation headquartered in an aging building with an infrastructure well beyond the end of its useful life. I urge the chairman to correct this oversight, and we ought to look for the resources to do that.

I appreciate the committee's hard work, and I hope we can make some changes and make this a better bill. And I thank the gentleman for yielding me this time.

Mr. OLVER. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey (Mr. HOLT).

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

Mr. Chairman, following on the comments of the gentleman from Maryland (Mr. HOYER), I rise to express my disappointment that this bill does not fully fund the amounts authorized in the Help America Vote Act for Fiscal Year 2005. We were proud to pass, on the eve of the 2002 election, groundbreaking election reform legislation that authorized almost \$4 billion in Federal funding that would, among other things, improve the administration of elections; provide for increased accessibility to voting equipment and polling places for people with physical disabilities; fund the replacement of obsolete voting equipment; pay for protection and advocacy systems; provide for the establishment of State-based administrative procedures to remedy grievances, including grievances pertaining to accessibility; call for the establishment of an Election Assistance Commission to serve as a national clearinghouse and resource for the compilation of information and review procedures with respect to the administration of Federal elections; and to call for the establishment of a Standards Board, a Board of Advisors and a Technical Guidelines Development Committee, all of which would assist in the development of good voting systems.

Although over the past couple of years I have been primarily focused on standards for voting systems, specifically the lack of meaningful security standards for such systems, the Help America Vote Act funded many important things. And considering how important it is to our democracy to have fair, accessible, auditable elections and considering how many doubts citizens have had about elections in recent years, I am deeply disappointed that this appropriations bill provides so little HAVA funding, only \$15 million, a pittance on the amount yet to be funded authorized under HAVA. Fifteen million dollars provided in this bill, leaving unappropriated more than \$700 million of HAVA's total \$4 billion in authorized sums.

The absence of consistent funding for HAVA has caused a fundamental problem; namely, that Federal funding of election systems outpaced the critical need for implementation of meaningful security standards. The Committee on Appropriations recognizes this. With respect to the \$15 million appropriated for the Election Assistance Commission, \$5 million is specified "to address the desperate need for research and standardization of election systems." The committee urged the EAC to "address standards and technology issues related to voting equipment." That is their quote. But the committee does not provide adequate funding. Forty million dollars was authorized to fund the protection and advocacy systems to ensure full participation in the election process for individuals with disabilities. Less than a third of that

amount has been appropriated. One hundred million dollars was authorized to fund polling place accessibility and education and outreach to disabled voters. Only about a third, less than a third of that, has been appropriated. HAVA has called for the establishment of a Help America Vote college program and Help America Vote high school program. Each of those has received only about half of the authorized amount. HAVA called for \$3 billion in payments to States to help them meet their audit trail, accessibility, language and other voting system requirements, and we fall far short of the appropriations in that category.

HAVA, I believe, will have to be amended. There are some improvements that need to be made. But that is no excuse for not fully funding this central part of the American democratic system to make sure that we have fair, accessible, and auditable elections.

Mr. OLVER. Mr. Chairman, I yield 4 minutes to the gentleman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Chairman, I thank the gentleman from Massachusetts for yielding me this time, and I recognize that there is a lot of hard work that the chairman and the ranking member have done on this bill and we are grateful for the bill despite its horrific shortcomings. The subcommittee has worked hard.

Secretary Ridge was before the Select Committee on Homeland Security today, and an issue came forward that I think simply must be discussed during this debate. I said to the Secretary, whose hard work I very much appreciate, how much it looked like we were fighting the last war. The private sector, the business sector does not even have up on the website of the Department of Homeland Security some guidance as to what they should do, except that is where all the people are and that is where all the revenue is raised in our country. And where the people are in transportation, on rail, on public transportation, it is not even on the radar when it comes to homeland security.

I have got an act that has a lot of co-sponsors called the Safe Transportation Act, and I have to tell my colleagues that terrorists really do have an open field. Not in aviation anymore. We have shored up some of that. But they have an open field in public transportation and in rail. That is where the people of the United States spend their time going to and from one part of the country and the other and one city and the other. We have allocated about \$14 billion for aviation security, and we are sure we are doing the right thing there. I am on the Subcommittee on Aviation. That was the right thing to do. There is more still to be done there.

But even after Madrid, there is something approximating \$300 million for all of rail and public security. People go down into subways. People get on buses. And there is almost a blank

slate there. There are 9 billion passenger trips annually on public transportation. I first learned of this problem when Amtrak security here in the Nation's capital came to see me, and I tell my colleagues that my hair stood on end because Union Station is here, and he told me what his work had been with transportation security, and he told me that virtually nothing had been done here or in Penn Station or in Philadelphia's 30th Street Station. Do not even let us get to the tracks and the tunnels. Amtrak accounts for only 22,000 of U.S. rail routes. There are 140,000, and sometimes they are a big company like Amtrak. Most of the time they are much smaller.

We are living in the post-Madrid era, not the post-9/11 era. There were 200 innocent civilians killed there, 1,500 injured. One-third of terrorist attacks in the world target public transportation systems because they are the easiest to get at. I sat in on a Subcommittee on Railroads hearing a couple of months ago, and I was horrified. There were two agencies there who are supposed to be responsible, the Federal Railways Administration and the Department of Homeland Security official. Nobody is in charge. There is no national security plan for rail security, for subways, for buses. There is no assessment of our rail security, of our public transportation security. And here we have a transportation bill before us. Hey, not a word about it. It simply has to be inserted into this debate. It is no way to run a railway, no way to run a public transportation system. And we are in mortal danger when we leave the major form of transportation used by Americans hanging out there with \$300 million while we have fought the last \$14 billion war in the air. Let us begin to fight this war.

Mr. OLVER. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

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

I appreciate the help of the gentleman from Massachusetts (Mr. OLVER) in trying to expedite the time for the benefit of everyone.

Let me just make a couple of responses to things that a couple of speakers mentioned on the Help America Vote Act. We have provided federally something like a little bit over \$3 billion in the last couple of years to improve voting systems around the country. A billion dollars of that remains unspent. The States are not prepared for us to add more money on this bill or any other bill because they have got \$1 billion that has not been spent yet. They are waiting on some voting standards that are supposed to be coming from the Federal Commission, which has not produced those standards yet. So I do not think it would be responsible for us to take away from other urgent and pressing priorities to put more money into an account that already has much more money than it is able to spend. So I figured it was important to mention that.

Let me, in closing, Mr. Chairman, repeat something I said before, and I realize it is confusing to anyone that may be listening as well as to Members. We will be having in this bill a number of parliamentary tactics, points of order brought up. It is not because we on the Committee on Appropriations have not produced a responsible piece of legislation, trying to fund the most important priorities in transportation and in the Federal agencies that are a part of this bill. However, because the authorizing committee has not been able to complete its work, it is overdue by over a year now, we have some things that technically are unauthorized programs. It is unauthorized for this Congress to provide Federal highway transportation dollars.

□ 1730

Now, it is authorized to collect the gasoline tax that our citizens and our constituents pay at the pump. They are paying the fuel tax, but it is not authorized with that money to go back into the roads. That is not right, so we went ahead and we provided that transportation funding. We provided the highway funding and the transit funding and the aviation funding, even though the authorizers say, Well, it is not authorized.

So because of that, they are going to come to this floor, and people are going to say: Well, strike out this part of the bill. Strike out funding for highways. Strike out provisions, some of which spend money and some of which, frankly, save money. We are going to have a messy process.

But ultimately, when this committee produces the House-Senate conference report, we are going to take care of those things that are addressed in this. We will resolve the parliamentary problems because, frankly, the points of order, the parliamentary points of order do not lie against a conference report as they do against legislation in the House.

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

Mr. ISTOOK. I yield to the gentleman from Massachusetts.

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

I would like to clarify on the point that the gentleman just made and the example that you just used, that the authorization bill on T&I highway programs has an extension. As of the moment, it is an extension to September 24. If there is not a full bill, authorization bill that has passed by then, there will be another extension into the next fiscal year. And the irony is that we would then be operating within the authorization of the extension into the next fiscal year in what we would be doing.

Mr. ISTOOK. Mr. Chairman, the gentleman is certainly correct.

Reclaiming my time, this Committee on Appropriations is doing its work, whether the rest of Congress is able to for whatever reason fulfill their work

or not. I regret that this is going to be a messy process. We are going to have some things stricken out of the bill. If the things that the Committee on Transportation and Infrastructure want stricken out of the bill are all out, we would be above our budget allocation. We would be in violation of the rules of this House on the amount of money that we have to spend. That is pretty bad when we have a deficit already to make it worse.

We are not going to do that. We will make sure appropriate amendments are offered and that this bill ultimately is within the amount of money that has been allocated to our subcommittee. There may be some money that has been shifted about to what essentially will be a holding account, just to make sure that we reserve it, and we will resolve those things in committee.

I realize it is confusing, Mr. Chairman, but I appreciate the trust and patience of the Members of this body in resolving it.

I do, in final comment, want to make sure that I express my appreciation for the people that work behind the scenes so hard and so diligently to help us present this legislation: The chief clerk of our subcommittee, Rich Efford; the staff members of the subcommittee, Cheryle Tucker, Leigha Shaw, Dena Baron, Kristen Jones; and a member of my staff who works on these issues, Kurt Conrad, as well as my chief of staff, John Albaugh.

We are grateful because we, as Members of Congress, could not do our work without the good support of these people.

I thank the gentleman from Massachusetts and other Members for their comments. I ask every Member to support this bill.

Mr. Chairman, I was ready to yield back the balance of my time, but I yield such time as he may consume to the gentleman from Florida (Mr. MICA).

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

I just want to say that the Subcommittee on Transportation, Treasury and Independent Agencies has done an outstanding job of bringing this legislation before the House of Representatives, and it is during some very difficult times with some constraints.

I am going to be here representing the Committee on Transportation and Infrastructure, raising some points of order, not to object to specific actions the subcommittee has taken; I think they have been well-intended on behalf of the appropriators, but to offer and preserve some of the integrity of the authorization process on behalf of the full committee, the gentleman from Florida (Mr. YOUNG), myself, and other subcommittee chairs.

So again, it is a process of give and take, but we do know the constraints the gentleman has worked under, and we have to preserve the integrity of our jurisdiction. And I think that is important in this legislative process.

So I congratulate the gentleman from Oklahoma and the staff on the

fine job they have done, and we will offer these in that light.

Mr. ISTOOK. Mr. Chairman, I appreciate the comments of the gentleman from Florida (Mr. MICA).

Mr. PASTOR. Mr. Chairman, the bill we are considering funds an important national security program. The Maritime Security Program ensues that a fleet of privately owned, commercially viable and militarily useful vessels are available to meet national defense and other security requirements.

A critical new element of the MSP program as reauthorized in the Department of Defense FY04 Authorization Act is the construction and operation of militarily useful U.S.-flag product tankers, which are essential for the carriage of jet fuel and other refined petroleum products. To facilitate the construction of U.S.-flag tankers in American shipyards for the MSP program, the FY04 Defense Authorization Act created the National Defense Tank Vessel Construction Assistance Program.

Implementation of this program has been underway for seven months, with seven proposals submitted to the Maritime Administration (MARAD) to construct tankers for the MSP program. Final proposals for the program are due very shortly—on October 22, 2004—with awards scheduled to occur in January 2005. However, a provision in the Transportation Appropriations Bill—sec. 187—would bring this vital program to a halt by prohibiting any funds from being expended by MARAD to administer or ward any of the contracts under the new program.

On August 24, 2004, the U.S. Transportation Command, the Defense Department's logistics arm, identified "New Tank Vessels . . . constructed in the United States after November 25, 2003, and capable of carrying militarily useful petroleum products," as critical to the new MSP fleet. I am concerned about the potential impact this section 187 prohibition would have on our Nation's military sealift at a time when the support of our overseas troops is critical.

I intend to work with the Committee and Subcommittee in conference to ensure that this key component of our military sealift is not jeopardized, and I encourage my colleagues who share this concern to do the same.

Mr. GEORGE MILLER of California. Mr. Chairman, I rise in support of the Sanders Amendment.

The Sanders Amendment would ensure that the Treasury department not use any of its funds to undermine the federal court decision in *Cooper v. IBM* that held that cash balance conversions violate federal pension and age discrimination law.

We've been here many times before.

In fact, this is the fourth time that the House is voting to protect older workers' pensions under cash balance pension plan conversions. The last 2 times the amendment passed by 308–121 and 258–160.

Instead of voting to prevent the Treasury department from undermining workers' pensions, I wish we were voting on affirmative legislation to set standards for cash balance plans.

This issue has been going on since 1999.

In 1999, IBM converted its pension plan to a cash balance plan.

Luckily, it's computer savvy workers quickly figured out that the conversion would reduce their expected pensions.

The workers mobilized and got Congress to hold hearings.

The Clinton administration imposed a moratorium on approvals of conversions in September 1999.

But then, the new Bush administration tried to issue regulations lifting the moratorium and permit conversions without any worker protections.

Immediately 218 members of Congress wrote to the President urging him to revise the regulations and protect older workers.

Four times the House and Senate have voted to require Treasury to withdraw its regulations and protect older workers.

Finally, this year, in 2004, the Bush administration relented and withdrew the regulations. The administration even sent up a revised legislative proposal that contained a modicum of older worker protections though it did not go far enough to protect older workers.

But, still the issue is not resolved. Either Congress or the courts must set standards for cash balance plans and conversions to such plans.

The Republican Congress has done nothing on this issue for almost six years.

If anything, Republican leaders would defer to employer lobbying and simply permit cash balance conversions without any protections for older workers.

That's why the Courts may have to be the body that resolves some of these issues.

One court, the federal district court for the state of Illinois, determined that conversions are illegal. Other courts have disagreed. These cases and others still waiting to be heard will take years to resolve.

This amendment makes clear that the Treasury department shall not interfere in these cases.

Today worker pension security is in crisis.

This administration has done nothing to protect workers' pensions and done everything to undermine them.

They didn't protect workers after Enron and WorldCom from employers loading pension plans with employer stock and letting the executives protect themselves while leaving the workers stuck with worthless stock.

They didn't protect participants in 401(k) plans from a broad range of mutual fund abuses that have decimated retirement nest eggs.

And they are not protecting workers now from rampant pension underfunding. The PBGC, the agency that insures traditional pensions, has a \$10 billion deficit. And if the airlines go under, the deficit will increase by another \$30 billion. Over 1,000 pension plans are more than \$50 million underfunded. And workers don't even know because the PBGC is required to keep the information secret.

The administration and the Republican majority are doing nothing to protect worker pensions.

I urge my colleagues to vote once again and remind the majority that it is the will of the Congress that older workers be protected in cash balance pension plan conversions.

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

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill will be considered for amendment under the 5-minute rule.

During consideration of the bill for amendment, the Chair may accord pri-

ority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Clerk will read.

The Clerk read as follows:

H.R. 5025

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Transportation and Treasury and independent agencies for the fiscal year ending September 30, 2005, and for other purposes, namely:

TITLE I

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

SALARIES AND EXPENSES

For necessary expenses of the Office of the Secretary, \$89,000,000, of which not to exceed \$2,219,100 shall be available for the immediate Office of the Secretary; not to exceed \$704,500 shall be available for the immediate Office of the Deputy Secretary; not to exceed \$15,394,300 shall be available for the Office of the General Counsel; not to exceed \$12,639,000 shall be available for the Office of the Under Secretary of Transportation for Policy; not to exceed \$8,572,900 shall be available for the Office of the Assistant Secretary for Budget and Programs; not to exceed \$2,315,700 shall be available for the Office of the Assistant Secretary for Governmental Affairs; not to exceed \$23,435,700 shall be available for the Office of the Assistant Secretary for Administration; not to exceed \$1,928,700 shall be available for the Office of Public Affairs; not to exceed \$1,456,000 shall be available for the Office of the Executive Secretariat; not to exceed \$704,000 shall be available for the Board of Contract Appeals; not to exceed \$1,277,200 shall be available for the Office of Small and Disadvantaged Business Utilization; not to exceed \$2,052,900 for the Office of Intelligence and Security; not to exceed \$3,300,000 shall be available for the Office of Emergency Transportation; and not to exceed \$13,000,000 shall be available for the Office of the Chief Information Officer: *Provided*, That the Secretary of Transportation is authorized to transfer funds appropriated for any office of the Office of the Secretary to any other office of the Office of the Secretary: *Provided further*, That no appropriation for any office shall be increased or decreased by more than 5 percent by all such transfers: *Provided further*, That any change in funding greater than 5 percent shall be submitted for approval to the House and Senate Committees on Appropriations: *Provided further*, That not to exceed \$60,000 shall be for allocation within the Department for official reception and representation expenses as the Secretary may determine: *Provided further*, That notwithstanding any other provision of law, excluding fees authorized in Public Law 107–71, there may be credited to this appropriation up to \$2,500,000 in funds received in user fees: *Provided further*, That none of the funds provided in this Act shall be available for the position of Assistant Secretary for Public Affairs.

OFFICE OF CIVIL RIGHTS

For necessary expenses of the Office of Civil Rights, \$8,700,000.

TRANSPORTATION PLANNING, RESEARCH, AND DEVELOPMENT

For necessary expenses for conducting transportation planning, research, systems development, development activities, and making grants, to remain available until expended, \$10,800,000.

WORKING CAPITAL FUND

Necessary expenses for operating costs and capital outlays of the Working Capital Fund, not to exceed \$125,000,000, shall be paid from appropriations made available to the Department of Transportation: *Provided*, That such services shall be provided on a competitive basis to entities within the Department of Transportation: *Provided further*, That the above limitation on operating expenses shall not apply to non-DOT entities: *Provided further*, That no funds appropriated in this Act to an agency of the Department shall be transferred to the Working Capital Fund without the approval of the agency modal administrator: *Provided further*, That no assessments may be levied against any program, budget activity, subactivity or project funded by this Act unless notice of such assessments and the basis therefor are presented to the House and Senate Committees on Appropriations and are approved by such Committees.

MINORITY BUSINESS RESOURCE CENTER PROGRAM

For the cost of guaranteed loans, \$500,000, as authorized by 49 U.S.C. 332: *Provided*, That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974: *Provided further*, That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed \$18,367,000. In addition, for administrative expenses to carry out the guaranteed loan program, \$400,000.

MINORITY BUSINESS OUTREACH

For necessary expenses of Minority Business Resource Center outreach activities, \$3,000,000, to remain available until September 30, 2006: *Provided*, That notwithstanding 49 U.S.C. 332, these funds may be used for business opportunities related to any mode of transportation.

PAYMENTS TO AIR CARRIERS

(AIRPORT AND AIRWAY TRUST FUND)

In addition to funds made available from any other source to carry out the essential air service program under 49 U.S.C. 41731 through 41742, \$51,700,000, to be derived from the Airport and Airway Trust Fund, to remain available until expended.

POINT OF ORDER

Mr. MICA. Mr. Chairman, I raise a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. MICA. Mr. Chairman, I raise a point of order against the phrase, "to be derived from the airport and airway trust fund," beginning on page 5, line 24 and ending on line 25. This provision violates clause 2 of rule XXI. It changes existing law and, therefore, constitutes legislating on an appropriations bill in violation of House rules.

The CHAIRMAN. Is there further discussion on the point of order?

The Chair recognizes the gentleman from Oklahoma (Mr. ISTOOK).

Mr. ISTOOK. Mr. Chairman, the point of order, if I understand it correctly, is made against a portion, rather than an entirety, of the paragraph. I believe the House rules require the point of order must lie against the entire paragraph and not just a portion thereof. I believe the point of order is incorrectly offered accordingly.

The CHAIRMAN. The point of order may be surgical. Does the gentleman from Oklahoma wish to expand the point of order?

Mr. ISTOOK. If the gentleman's point of order lies against the entire paragraph, I concede the point of order.

The CHAIRMAN. The gentleman has made a point of order against a portion of the paragraph. Does the gentleman from Oklahoma wish to expand the point of order?

Mr. MICA. Mr. Chairman, I believe that we want to raise the point of order against a phrase. Again, the point of order which we want to raise against is the phrase, "to be derived from the airport and airway trust fund," beginning on page 5, line 24, and ending on line 25.

The CHAIRMAN. It is permissible to make a point of order against a portion of the paragraph, but the gentleman from Oklahoma may expand the point of order.

Mr. ISTOOK. Mr. Chairman, I insist that the point of order lie against the entire paragraph, that it be expanded against the entire paragraph.

The CHAIRMAN. The point of order is against the entire paragraph.

Mr. MICA. Mr. Chairman, just to that point, I do not believe that the gentleman would have the ability to expand. I thought that would be my prerogative in this case.

The CHAIRMAN. Any Member may assert the point of order against the entire paragraph.

The Chair will hear argument on the point of order.

Mr. ISTOOK. Mr. Chairman, with it expanded to include the entire paragraph, I must concede the point of order.

The CHAIRMAN. The gentleman concedes the point of order. The point of order is sustained. The paragraph is stricken.

Mr. ISTOOK. Mr. Chairman, for the purposes of clarity, the Chair has ruled to strike the entire paragraph?

The CHAIRMAN. The point of order is against the entire paragraph, and the entire paragraph is stricken.

Mr. OLVER. Mr. Chairman, I am sorry to raise this, but there are apparently different versions, different copies floating around, and I would like to know, if I could, what is it that has now been stricken?

The CHAIRMAN. The paragraph beginning on page 5, line 20 through line 26.

Mr. OLVER. All right. I thank the Chair very much, because my recollection was that one of the Members on the other side was reading from a different section at one point, and the words did not correspond to what is in that section, so I got a little confused.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

FEDERAL AVIATION ADMINISTRATION OPERATIONS

For necessary expenses of the Federal Aviation Administration, not otherwise provided for, including operations and research activities related to commercial space transportation, administrative expenses for research and development, establishment of air navigation facilities, the operation (including leasing) and maintenance of aircraft,

subsidizing the cost of aeronautical charts and maps sold to the public, lease or purchase of passenger motor vehicles for replacement only, in addition to amounts made available by Public Law 108-176, \$7,726,000,000, of which \$6,002,000,000 shall be derived from the Airport and Airway Trust Fund, of which not to exceed \$6,160,617,600 shall be available for air traffic services activities; not to exceed \$916,894,000 shall be available for aviation regulation and certification activities; not to exceed \$224,039,000 shall be available for research and acquisition activities; not to exceed \$11,674,000 shall be available for commercial space transportation activities; not to exceed \$50,624,000 shall be available for financial services activities; not to exceed \$69,821,600 shall be available for human resources program activities; not to exceed \$149,569,800 shall be available for region and center operations and regional coordination activities; not to exceed \$139,302,000 shall be available for staff offices; and not to exceed \$38,254,000 shall be available for information services: *Provided*, That none of the funds in this Act shall be available for the Federal Aviation Administration to finalize or implement any regulation that would promulgate new aviation user fees not specifically authorized by law after the date of the enactment of this Act: *Provided further*, That there may be credited to this appropriation funds received from States, counties, municipalities, foreign authorities, other public authorities, and private sources, for expenses incurred in the provision of agency services, including receipts for the maintenance and operation of air navigation facilities, and for issuance, renewal or modification of certificates, including airman, aircraft, and repair station certificates, or for tests related thereto, or for processing major repair or alteration forms: *Provided further*, That of the funds appropriated under this heading, not less than \$7,000,000 shall be for the contract tower cost-sharing program: *Provided further*, That funds may be used to enter into a grant agreement with a nonprofit standard-setting organization to assist in the development of aviation safety standards: *Provided further*, That none of the funds in this Act shall be available for new applicants for the second career training program: *Provided further*, That none of the funds in this Act shall be available for paying premium pay under 5 U.S.C. 5546(a) to any Federal Aviation Administration employee unless such employee actually performed work during the time corresponding to such premium pay: *Provided further*, That none of the funds in this Act may be obligated or expended to operate a manned auxiliary flight service station in the contiguous United States: *Provided further*, That none of the funds in this Act for aeronautical charting and cartography are available for activities conducted by, or coordinated through, the Working Capital Fund: *Provided further*, That of the funds provided under this heading, \$4,000,000 is available only for recruitment, personnel compensation and benefits, and related costs to raise the level of operational air traffic control supervisors to the level of 1.846: *Provided further*, That none of the funds in this Act may be obligated or expended for an employee of the Federal Aviation Administration to purchase a store gift card or gift certificate through use of a Government-issued credit card.

POINT OF ORDER

Mr. MICA. Mr. Chairman, I raise a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. MICA. Mr. Chairman, I raise a point of order against the phrase, "of

which \$6,002,000,000 shall be derived from the airport and airway trust fund," beginning on page 6, line 13 and ending on line 14.

This provision violates clause 2 of rule XXI. It changes existing law and, therefore, constitutes legislating on an appropriations bill in violation of House rules.

The CHAIRMAN. Does any other Member wish to be heard on the point of order?

Mr. ISTOOK. Mr. Chairman, I wish to be heard on the point of order.

First, I believe the point of order would properly lie against the entire paragraph. However, in this case, and I want to make sure this is agreeable with my counterpart, the gentleman from Florida (Mr. MICA), I intend to offer an amendment after the sustaining of the point of order to insert the language, "of which \$4.972 billion shall be derived from the airport and airway trust fund," effectively reinserting the stricken provision but changing the dollar figure from \$6.2 billion to \$4.972, which I believe satisfies the parliamentary requirements.

Mr. MICA. Mr. Chairman, if the gentleman will yield, I have no objection to that.

Mr. ISTOOK. Mr. Chairman, with that in mind, I will not ask that the point of order be expanded.

The CHAIRMAN. The Chair will not permit a colloquy on this, but will hear each gentleman in turn. Does the gentleman concede the point of order?

Mr. ISTOOK. I do.

The CHAIRMAN. The point of order is conceded and sustained, and the language identified by the point of order is stricken from the bill.

AMENDMENT OFFERED BY MR. ISTOOK

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

The Clerk read as follows:

Amendment offered by Mr. ISTOOK:

On page 6 of the bill, after "\$7,726,000,000," insert: "of which \$4,972,000,000 shall be derived from the Airport and Airway Trust Fund."

Mr. ISTOOK. Mr. Chairman, this simply changes the figure that comes from the airport trust fund to satisfy the point of order that was raised without doing further damage to this section of the bill. I ask that it be adopted.

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Mr. MICA. Mr. Chairman, we agree with that amendment and urge its adoption.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Oklahoma (Mr. ISTOOK).

The amendment was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

FACILITIES AND EQUIPMENT
(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for acquisition, establishment, technical support services, improvement by contract or purchase, and hire of air navigation and experimental facilities and equipment, as authorized under part A of subtitle

VII of title 49, United States Code, including initial acquisition of necessary sites by lease or grant; engineering and service testing, including construction of test facilities and acquisition of necessary sites by lease or grant; construction and furnishing of quarters and related accommodations for officers and employees of the Federal Aviation Administration stationed at remote localities where such accommodations are not available; and the purchase, lease, or transfer of aircraft from funds available under this heading; to be derived from the Airport and Airway Trust Fund, \$2,500,000,000, of which \$2,056,300,000 shall remain available until September 30, 2007, and of which \$443,700,000 shall remain available until September 30, 2005: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred in the establishment and modernization of air navigation facilities: *Provided further*, That upon initial submission to the Congress of the fiscal year 2006 President's budget, the Secretary of Transportation shall transmit to the Congress a comprehensive capital investment plan for the Federal Aviation Administration which includes funding for each budget line item for fiscal years 2006 through 2010, with total funding for each year of the plan constrained to the funding targets for those years as estimated and approved by the Office of Management and Budget: *Provided further*, That of the funds provided under this heading, not less than \$3,000,000 is for contract audit services provided by the Defense Contract Audit Agency.

RESEARCH, ENGINEERING, AND DEVELOPMENT
(AIRPORT AND AIRWAY TRUST FUND)

For necessary expenses, not otherwise provided for, for research, engineering, and development, as authorized under part A of subtitle VII of title 49, United States Code, including construction of experimental facilities and acquisition of necessary sites by lease or grant, \$117,000,000, to be derived from the Airport and Airway Trust Fund and to remain available until September 30, 2007: *Provided*, That there may be credited to this appropriation funds received from States, counties, municipalities, other public authorities, and private sources, for expenses incurred for research, engineering, and development.

GRANTS-IN-AID FOR AIRPORTS
(LIQUIDATION OF CONTRACT AUTHORIZATION)
(LIMITATION ON OBLIGATIONS)
RESCISSION OF CONTRACT AUTHORIZATION
(AIRPORT AND AIRWAY TRUST FUND)

For liquidation of obligations incurred for grants-in-aid for airport planning and development, and noise compatibility planning and programs as authorized under subchapter I of chapter 471 and subchapter I of chapter 475 of title 49, United States Code, and under other law authorizing such obligations; for procurement, installation, and commissioning of runway incursion prevention devices and systems at airports of such title; for grants authorized under section 41743 of title 49, United States Code; and for inspection activities and administration of airport safety programs, including those related to airport operating certificates under section 44706 of title 49, United States Code, \$3,200,000,000, to be derived from the Airport and Airway Trust Fund and to remain available until expended: *Provided*, That none of the funds under this heading shall be available for the planning or execution of programs the obligations for which are in excess of \$3,993,000,000 in fiscal year 2005, notwithstanding section 47117(g) of title 49, United

States Code: *Provided further*, That none of the funds under this heading shall be available for the replacement of baggage conveyor systems, reconfiguration of terminal baggage areas, or other airport improvements that are necessary to install bulk explosive detection systems: *Provided further*, That notwithstanding any other provision of law, not more than \$69,302,000 of funds limited under this heading shall be obligated for administration and not less than \$20,000,000 shall be for the Small Community Air Service Development Pilot Program: *Provided further*, That of the funds made available for the Small Community Air Service Development Pilot Program, \$4,000,000 shall be for airports which have been discontinued from the Essential Air Service program since January 1, 2001: *Provided further*, That of amounts available in this or prior year Acts under 49 U.S.C. 48112 and 48103, as amended, \$758,000,000 are rescinded.

POINT OF ORDER

Mr. MICA. Mr. Chairman, I raise a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. MICA. Mr. Chairman, I raise a point of order against page 11, line 13, beginning with in "for grants," through page 11, line 18, ending with "United States Code."

This provision violates clause 2 of Rule XXI. It provides an appropriation not supported by authorization in violation of House rules.

The CHAIRMAN. Do other Members wish to be heard on the point of order?

Mr. ISTOOK. Mr. Chairman, I insist that the point of order be expanded to lie against the entire paragraph.

The CHAIRMAN. The point of order is expanded and is pending against the entire paragraph.

Does any Member wish to be heard further on the point of order? If not, the Chair will rule.

The provision proposes to appropriate certain funds in the bill. Under clause 2(a) of rule XXI, such an earmarking must be specifically authorized by law. The burden of establishing the authorization in law rests in this instance with the committee. Finding that this burden has not been carried, the point of order is sustained and the paragraph is stricken from the bill.

Mr. MICA. Mr. Chairman, how far would that strike through, to what line and page?

The CHAIRMAN. It would strike the entire paragraph.

Mr. MICA. Mr. Chairman, through page 12, line 15?

The CHAIRMAN. The gentleman is correct.

The Clerk will read.

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

Mr. Chairman, I rise to engage in a colloquy with the gentleman from Oklahoma (Mr. ISTOOK), the distinguished chairman of the Subcommittee on Transportation, Treasury and Independent Agencies of the Committee on Appropriations.

Mr. Chairman, I rise on behalf of the gentleman from New Hampshire (Mr. BASS), the gentlewoman from Pennsylvania (Ms. HART) and Resident Commissioner, the gentleman from Puerto

Rico (Mr. ACEVEDO-VILÁ) to discuss an issue that is critical to our districts, air traffic control training programs.

As you know, the Air Traffic Collegiate Training Initiative, also known as CTI, is a successful program that provides the Federal Aviation Administration an educated pool of candidates to meet its air traffic controller staffing needs.

I am proud to inform you that the University of North Dakota's air traffic controller program is one of the 13 FAA approved and certified CTI programs that graduates exemplary students ready for assignment with the FAA.

As a strong supporter of the Air Traffic Collegiate Training Initiative Program, I am concerned that the proposed report language in fiscal year 2005 House, Transportation and Related Agencies appropriation bill may effect the current role CTI programs play in the Federal Aviation Administration's training process. Some may read this report language as requiring all new air traffic controllers to receive their initial training at the FAA Academy. I would appreciate the chairman's confirmation that this proposed report directive does not jeopardize the status of CTI programs as an integral part of the FAA's training process.

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

Mr. POMEROY. I yield to the gentleman from Oklahoma.

Mr. ISTOOK. I thank the gentleman from North Dakota for raising this important issue. I welcome the opportunity to set record straight.

As you know, the fiscal year 2005 House Transportation Appropriations bill provides the FAA with an additional \$9 million for additional hiring and training of air traffic controllers. This \$9 million is above the amount already budgeted by the FAA.

Our report does not specify how much has to go for salaries and how much for training, but we can safely assume the majority will go for salaries. Probably no more than \$2 million to \$4 million more of those funds would be for the actual training.

The base budget for the FAA includes \$47.5 million for controller training. Our bill allows that money to be used at the discretion of the FAA at the CTI programs, at the FAA Academy or elsewhere. Contrary to inaccurate press report, this report language does not affect the role of CTI programs as a vital source of air traffic control candidates for the FAA. The language only directs that the portion of the extra \$9 million that is used for training is to be used at the FAA Academy. But that leaves the overwhelming majority of training funds that are in the base budget, \$47.5 million, at the discretion of the FAA, which can include the CTI programs at the same level as currently.

This report language does not affect the role that CTI programs play in the training process of the FAA. There is nothing in this bill that prevents CTI

programs such as the one in the gentleman's district at the University of North Dakota from continuing in the same level and scope as they do currently.

Mr. POMEROY. Mr. Chairman, reclaiming my time, that was a very important clarification for us. I thank the gentleman for participating in it.

Mr. YOUNG of Florida. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wanted to briefly explain what is happening here with these points of order that are being raised by the Committee on Transportation and Infrastructure and the subsequent points of order that are being raised by the Committee on Appropriations.

The bill was finely tuned and very well crafted. The gentleman from Oklahoma (Mr. ISTOOK), of the subcommittee, did a really good job bringing out a transportation bill. They could have used more money but they had a certain amount available and they used it wisely. But when the Committee on Transportation and Infrastructure raises their points of order, and when the gentleman from Florida (Mr. MICA) concludes raising these points of order, this bill will be at least a billion dollars over its 302(b) allocation. And, of course, we have committed ourselves, since I have been chairman of this committee, to staying within our 302(a) allocation and the subcommittees to staying within their 302(b) allocations.

So we are required to raise our own points of order to deal with unauthorized projects that we had agreed to fund but that we will no longer be able to fund, because the points of order raised by the Committee on Transportation and Infrastructure will take us beyond our 302(b) allocation.

I explain that in advance because very shortly I will raise several points of order that will bring the bill back into balance within the 302(b) allocation.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

GENERAL PROVISIONS—FEDERAL AVIATION
ADMINISTRATION

SEC. 101. Notwithstanding any other provision of law, airports may transfer, without consideration, to the Federal Aviation Administration (FAA) instrument landing systems (along with associated approach lighting equipment and runway visual range equipment) which conform to FAA design and performance specifications, the purchase of which was assisted by a Federal airport-aid program, airport development aid program or airport improvement program grant: *Provided*, That, the Federal Aviation Administration shall accept such equipment, which shall thereafter be operated and maintained by FAA in accordance with agency criteria.

SEC. 102. None of the funds in this Act may be used to compensate in excess of 375 technical staff-years under the federally funded research and development center contract between the Federal Aviation Administration and the Center for Advanced Aviation Systems Development during fiscal year 2005.

SEC. 103. None of the funds made available in this Act may be used for engineering work

related to an additional runway at Louis Armstrong New Orleans International Airport.

AMENDMENT OFFERED BY MR. JEFFERSON

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

The Clerk read as follows:

Amendment offered by Mr. JEFFERSON:
Page 13, strike lines 11 through 14.

Mr. JEFFERSON. Mr. Chairman, this amendment is offered because the provision is dated by some 3½ years. It has been carried over year after year. It prohibits the use of engineering funds in the program for engineering work related to an additional runway.

It raises an issue of concern on the part of our authority with respect to planning. It was ostensibly placed in the bill, in the legislation some years ago because of concerns about practices that a prior administration that existed some 2 years ago now, which has been replaced by a new aviation board, a new mayor, widely regarded as a reforming regime, and is simply now in the way of appropriate planning.

There are issues of safety, issues of security, issues now even of evacuation as we try and move people. It is very important our airport be permitted to plan as it should. So this provision is dated and I urge that it be stricken from the bill.

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

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

I do want to speak against the amendment offered by the gentleman from Louisiana (Mr. JEFFERSON). This particular language has been carried in this bill, I understand, for several years. The airport is actually in the district of the gentleman from Louisiana (Mr. TAUZIN), who I understand is in the hospital currently, but he strongly desires the provision to remain in the bill and not be stricken.

I am also advised that the gentleman from Louisiana (Mr. VITTER), another of the Louisiana Members whose district adjoins the airport, strongly supports keeping this provision in the bill.

Members should have the right, Mr. Chairman, to protect their district. The runway would not, as I understand it, be in the district of the gentleman from Louisiana (Mr. JEFFERSON), though I understand his concern for his State and for the overall community. I do ask, however, that the amendment be opposed, that it remain in the bill, and that we respect the wishes of the Members who are most closely involved and fully informed on this problem.

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

Mr. ISTOOK. I yield to the gentleman from Louisiana.

Mr. JEFFERSON. I wish to inform the gentleman that the airport is in the district that I represent. It is not in the gentleman from Louisiana's (Mr. TAUZIN) district or the gentleman from Louisiana's (Mr. VITTER) district.

It may be that a part of the runway may stretch into the area but the airport is in my district. It is not in the

district of the gentleman as you have so stated. So I want that corrected.

We have a vital interest in this. It is the city's property. It is the district's property that I represent and, really, we have the greatest interest in the outcome here.

Mr. ISTOOK. I understand that. I appreciate the gentleman. I do not want to be incorrect on any of these things.

It is obviously a project that affects a multiplicity of districts, the way the boundaries are configured. I do ask that the language remain in the bill.

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

If I understand, Mr. Chairman, the argument that was used, the reasoning that was used by the chairman and then the correction that was made by the gentleman from Louisiana (Mr. JEFFERSON), it would appear to me that using the gentleman from Oklahoma's (Mr. ISTOOK) argument, that this language should be stricken from the bill because the area involved is in the district of the member from Louisiana (Mr. JEFFERSON). So I would support the gentleman from Louisiana (Mr. JEFFERSON) in his position.

The CHAIRMAN. The question on the amendment offered by the gentleman from Louisiana (Mr. JEFFERSON).

The amendment was rejected.

The CHAIRMAN. The Clerk will read. The Clerk read as follows:

SEC. 104. None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation, or weather reporting: *Provided*, That the prohibition of funds in this section does not apply to negotiations between the agency and airport sponsors to achieve agreement on "below-market" rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for air traffic control facilities.

SEC. 105. None of the funds appropriated or limited by this Act may be used to change weight restrictions or prior permission rules at Teterboro Airport in Teterboro, New Jersey.

SEC. 106. WAR RISK INSURANCE.—Title 49, United States Code, is amended:

(a) In section 44302(f) by striking "August 31, 2004, and may extend through December 31, 2004," and inserting in lieu thereof "December 31, 2005".

(b) In section 44302(g)(1) by striking "may provide" and inserting in lieu thereof "shall make available".

(c) In section 44303(b) by—

(1) striking "December 31, 2004" and inserting in lieu thereof "December 31, 2005."

(2) striking the phrase "may extend" in the last sentence of the subsection and inserting in lieu thereof "shall extend".

FEDERAL HIGHWAY ADMINISTRATION
LIMITATION ON ADMINISTRATIVE EXPENSES

Necessary expenses for administration and operation of the Federal Highway Administration, not to exceed \$346,000,000, shall be paid in accordance with law from appropriations made available by this Act to the Federal Highway Administration together with advances and reimbursements received by the Federal Highway Administration.

POINT OF ORDER

Mr. YOUNG of Florida. Mr. Chairman, I raise a point of order.

For the reasons that I announced earlier I make a point of order on page 14, line 21 to page 15, line 3, because it provides an appropriation for an unauthorized program and, therefore, violates section 2(a) of rule XXI. Clause 2 of rule XXI states in pertinent part, "An appropriation may not be in order for an expenditure not previously authorized by law."

Mr. Chairman, this program is unauthorized and I insist on my point of order.

NOTICE

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.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. EDDIE BERNICE JOHNSON of Texas (at the request of Ms. PELOSI) for today on account of medical reasons.

Mr. EVERETT (at the request of Mr. DELAY) for today after 6:00 p.m. and the balance of the week on account of the hurricane.

tend their remarks and include extraneous material.)

Mr. OSBORNE, for 5 minutes, today.

Mrs. BLACKBURN, for 5 minutes, today.

Mr. GINGREY, for 5 minutes, September 15.

Ms. HARRIS, for 5 minutes, September 15.

ADJOURNMENT

Mr. PEARCE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 44 minutes p.m.), the House adjourned until tomorrow, Wednesday, September 15, 2004, at 10 a.m.

EXECUTIVE COMMUNICATIONS,
ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

9557. A communication from the President of the United States, transmitting requests for additional emergency FY 2004 supplemental appropriations for the Departments of Defense, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, and Veterans Affairs, the Corps of Engineers, the National Aeronautics and Space Administration, the Small Business Administration, and the Executive Office of the President; (H. Doc. No. 108-215); to the Committee on Appropriations and ordered to be printed.

9558. A letter from the Chairman, Commission on Review of Overseas Military Facility Structure of the United States, transmitting as prescribed by Congress, a copy of the Commission's charter, pursuant to 10 U.S.C. 111 note, Public Law 108-132, section 128(b)(3)(A), (117 Stat. 1383); to the Committee on Armed Services.

9559. A letter from the Acting Comptroller, Department of Defense, transmitting a notice that the Department of the Navy is pursuing a multiyear procurement (MYP) for fiscal year 2004 through fiscal year 2008, pursuant to Public Law 108-87 and Public Law 108-136; to the Committee on Armed Services.

9560. A letter from the Legal Advisor to Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Rutland, Vermont) [MB Docket No. 02-66; RM-10252] received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9561. A letter from the Legal Advisor to Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations. (Anchorage, Alaska) [MB Docket No. 04-189; RM-10962] received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9562. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MCDERMOTT) to revise and extend their remarks and include extraneous material.)

Ms. WOOLSEY, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

Mr. MCDERMOTT, for 5 minutes, today.

Mr. HINCHEY, for 5 minutes, today.

Mr. FRANK of Massachusetts, for 5 minutes, today.

Mr. LEWIS of Georgia, for 5 minutes, today.

Mr. DAVIS of Illinois, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

(The following Members (at the request of Mr. PEARCE) to revise and ex-

Commission's final rule—Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Keeseville, New York, Hartford and White River Junction, Vermont) [MM Docket No. 02-23; RM-10359] received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9563. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Crawfordville, Georgia) [MB Docket No. 02-225; RM-10517] received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9564. A letter from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992; Direct Broadcast Satellite Public Interest Obligations; Sua Sponte Reconsideration [MM Docket No. 93-25] received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9565. A letter from the Secretary, Department of Commerce, transmitting a six-month report prepared by the Department of Commerce's Bureau of Industry and Security on the national emergency declared by Executive Order 13222 of August 17, 2001, to deal with the threat to the national security, foreign policy, and economy of the United States caused by the lapse of the Export Administration Act of 1979, pursuant to 50 U.S.C. 1641(c) 50 U.S.C. 1703(c); to the Committee on International Relations.

9566. A letter from the Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting a report prepared by the Department of State concerning international agreements other than treaties entered into by the United States transmitted to the Congress within a sixty day period after the execution thereof as specified in the Case-Zablocki Act, pursuant to 1 U.S.C. 112b(b); to the Committee on International Relations.

9567. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of an unauthorized retransfer of U.S.-origin defense articles pursuant to Section 3(e) of the Arms Export Control Act (AECA); to the Committee on International Relations.

9568. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting pursuant to Section 620C(c) of the Foreign Assistance Act of 1961, as amended, and in accordance with section 1(a)(6) of Executive Order 13313, a report prepared by the Department of State and the National Security Council on the progress toward a negotiated solution of the Cyprus question covering the period June 1, 2004 through July 31, 2004; to the Committee on International Relations.

9569. A letter from the Assistant Secretary for Fish, Wildlife, and Parks, Department of the Interior, transmitting a draft bill "To adjust the boundary of Lowell National Historical Park, and for other purposes"; to the Committee on Resources.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[Omitted from the Record of September 13, 2004]

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 1787. A bill to remove civil li-

ability barriers that discourage the donation of fire equipment to volunteer fire companies; with an amendment (Rept. 108-680). Referred to the Committee of the Whole House on the State of the Union.

[Filed on September 14, 2004]

Mr. REYNOLDS: Committee on Rules. House Resolution 770. Resolution providing for consideration of the bill (H.R. 5025) making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2005, and for other purposes (Rept. 108-686). Referred to the House Calendar.

REPORTED BILL SEQUENTIALLY REFERRED

Under clause 2 of rule XII, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. THOMAS: Committee on Ways and Means. H.R. 2971. A bill to amend the Social Security Act to enhance Social Security account number privacy protections, to prevent fraudulent misuse of the Social Security account number, and to otherwise enhance protection against identity theft, and for other purposes, with an amendment; referred to the Committee on the Judiciary for a period ending not later than October 1, 2004, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X (Rept. 108-685, Pt. 1). Ordered to be printed.

TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H.R. 2971. Referral to the Committees on Financial Services, and Energy and Commerce, extended for a period ending not later than October 1, 2004.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. PALLONE (for himself, Mr. BILIRAKIS, and Mrs. MALONEY):

H.R. 5071. A bill to amend the International Claims Settlement Act of 1949 to allow for certain claims of nationals of the United States against Turkey, and for other purposes; to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. YOUNG of Florida:

H.R. 5072. A bill making emergency supplemental appropriations for the fiscal year ending September 30, 2004, for additional disaster assistance relating to hurricane damage, and for other purposes; to the Committee on Appropriations, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WAXMAN (for himself, Mr. SANDERS, Mrs. MALONEY, Mr. CUMMINGS, Mr. KUCINICH, Mr. CLAY, Mr. VAN HOLLEN, Ms. NORTON, Ms. MCCOLLUM, and Mr. MCDERMOTT):

H.R. 5073. A bill to restore and strengthen the laws that provide for an open and transparent Federal Government; to the Committee on Government Reform.

By Mr. CHABOT:

H.R. 5074. A bill to amend the Internal Revenue Code of 1986 to provide a 100 percent deduction for the health insurance costs of individuals; to the Committee on Ways and Means.

By Mr. CONYERS (for himself, Mr. SCOTT of Virginia, and Mr. RANGEL):

H.R. 5075. A bill to encourage successful re-entry of incarcerated persons into the community after release, and for other purposes; to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Education and the Workforce, Financial Services, Energy and Commerce, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. MALONEY (for herself, Mr. SERRANO, Mr. TOWNS, and Mr. BISHOP of New York):

H.R. 5076. A bill to extend the time for filing certain claims under the September 11th Victim Compensation Fund of 2001, and for other purposes; to the Committee on the Judiciary.

By Mr. NETHERCUTT:

H.R. 5077. A bill to require the conveyance of a small parcel of Federal land in the Colville National Forest, Washington, and for other purposes; to the Committee on Resources.

By Mr. RUPPERSBERGER:

H.R. 5078. A bill to amend the Internal Revenue Code of 1986 to provide incentives for alternative fuels and alternative fuel vehicles; to the Committee on Ways and Means.

By Mr. GREEN of Texas (for himself, Mr. BAIRD, and Mr. DELAHUNT):

H.J. Res. 103. A joint resolution proposing an amendment to the Constitution of the United States to abolish the electoral college and to provide for the direct popular election of the President and Vice President of the United States; to the Committee on the Judiciary.

By Mr. BLUMENAUER (for himself, Mr. TOM DAVIS of Virginia, Mr. MARKEY, Mr. PAYNE, Mr. RYUN of Kansas, and Mr. WALSH):

H. Con. Res. 491. Concurrent resolution recognizing the achievements of the National Captioning Institute in providing closed captioning services to Americans who are deaf or hard-of-hearing; to the Committee on Education and the Workforce.

By Mr. HINCHEY:

H. Con. Res. 492. Concurrent resolution supporting the goals and ideals of Melanoma/Skin Cancer Detection and Prevention Month and Melanoma Day, and for other purposes; to the Committee on Energy and Commerce.

By Mr. VITTER:

H. Con. Res. 493. Concurrent resolution supporting the goals and ideals of National Volunteer Blood Donor Month; to the Committee on Government Reform.

By Mr. SIMMONS (for himself, Mr. COLLINS, Mrs. MILLER of Michigan, Mr. EVANS, Mr. SNYDER, Mr. GIBBONS, and Mr. SKELTON):

H. Res. 771. A resolution expressing the thanks of the House of Representatives and the Nation for the contributions to freedom made by American POW/MIAs on National POW/MIA Recognition Day; to the Committee on Armed Services.

By Mr. WAXMAN (for himself, Mr. MCHUGH, Ms. SCHAKOWSKY, Mr. DINGELL, Mr. RANGEL, Mr. BROWN of Ohio, Mr. CLAY, Ms. ROYBAL-ALLARD,

Mr. McDERMOTT, Mr. OWENS, and Mr. SNYDER):

H. Res. 772. A resolution supporting the goals and ideals of National Long-Term Care Residents' Rights Week and recognizing the importance the Nation of residents of long-term care facilities, including senior citizens and individuals living with disabilities; to the Committee on Government Reform.

By Mr. EDWARDS:

H. Res. 773. A resolution providing for the consideration of the bill (H.R. 4628) to protect consumers in managed care plans and other health coverage; to the Committee on Rules.

By Mr. MEEHAN (for himself, Mr. BILIRAKIS, and Mrs. MALONEY):

H. Res. 774. A resolution commending the people and Government of Greece for the successful completion of the 2004 Summer Olympic Games; to the Committee on International Relations.

By Mr. SHERMAN:

H. Res. 775. A resolution expressing the sense of the House of Representatives with respect to the continuity of Government and the smooth transition of executive power; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 97: Mr. ROTHMAN and Mr. KENNEDY of Rhode Island.

H.R. 104: Mr. VAN HOLLEN.

H.R. 141: Mr. BUTTERFIELD.

H.R. 571: Ms. ROS-LEHTINEN.

H.R. 677: Mr. BELL, Ms. CARSON of Indiana, and Mr. ISRAEL.

H.R. 742: Ms. HOOLEY of Oregon and Mr. EVANS.

H.R. 806: Mr. LEWIS of Kentucky.

H.R. 857: Mr. PITTS.

H.R. 953: Ms. HARRIS.

H.R. 962: Mr. DAVIS of Florida and Ms. LORETTA SANCHEZ of California.

H.R. 1064: Mr. WEINER.

H.R. 1101: Mr. SIMMONS.

H.R. 1310: Mr. DEMINT.

H.R. 1406: Mr. COLE.

H.R. 1478: Mr. LARSEN of Washington.

H.R. 1622: Mr. FILNER.

H.R. 1639: Mr. BLUMENAUER.

H.R. 1653: Mr. EDWARDS and Mr. PICKERING.

H.R. 1824: Mr. GEPHARDT.

H.R. 1858: Mr. FATTAH.

H.R. 1930: Ms. SCHAKOWSKY.

H.R. 2034: Mr. UPTON, Mr. CAMP, and Mr. PENCE.

H.R. 2094: Mrs. CUBIN.

H.R. 2265: Mrs. JOHNSON of Connecticut.

H.R. 2353: Mr. BOEHLERT and Mr. MOORE.

H.R. 2387: Mr. McDERMOTT and Mr. MILLER of North Carolina.

H.R. 2442: Mr. EVANS.

H.R. 2510: Mrs. BONO.

H.R. 2511: Mr. WILSON of South Carolina.

H.R. 2680: Mr. BUTTERFIELD, Mr. SHIMKUS, Mr. FALBOMAVAEGA, Mr. DICKS, Mr. MEEHAN, Mr. DOYLE, Mr. NADLER, Mr. CAPUANO, Mr. COOPER, Mr. FRANKS of Arizona, Mr. VAN HOLLEN, Mr. CHANDLER, Mr. ANDREWS, Mr. MCINTYRE, Mr. STUPAK, Mr. OBERSTAR, Mr. MATSUI, Mr. NEAL of Massachusetts, Mr. OBEY, Ms. SOLIS, Mr. ORTIZ, Mr. KLECZKA, Mr. WAMP, Mr. LYNCH, Mr. HOYER, Mr. EVANS, Ms. ESHOO, Mr. HOLT, Ms. HOOLEY of

Oregon, Mr. INSLEE, Ms. DEGETTE, Mr. DEFazio, Mrs. TAUSCHER, Mr. UDALL of Colorado, Mrs. NAPOLITANO, Mr. MURTHA, Mr. PASCRELL, and Mr. WU.

H.R. 2699: Mr. ANDREWS.

H.R. 2735: Mr. CALVERT.

H.R. 2821: Mr. EHLERS and Mr. SIMMONS.

H.R. 2968: Mr. SNYDER.

H.R. 3103: Mr. DUNCAN, Mr. DOOLITTLE, Mrs. JO ANN DAVIS of Virginia, and Mr. ORTIZ.

H.R. 3111: Mrs. BONO, Mr. BARTLETT of Maryland, Mr. WYNN, and Mr. CHANDLER.

H.R. 3119: Mr. KLINE.

H.R. 3192: Mr. COSTELLO and Mr. PRICE of North Carolina.

H.R. 3359: Mr. ANDREWS and Mr. HASTINGS of Florida.

H.R. 3455: Mr. WEXLER.

H.R. 3558: Mr. KILDEE.

H.R. 3729: Mr. GUTIERREZ, Mr. JACKSON of Illinois, Mr. LATOURETTE, Ms. DELAURO, Mr. FORD, and Mr. JEFFERSON.

H.R. 3755: Mrs. KELLY.

H.R. 3870: Mr. DOOLITTLE.

H.R. 3929: Mr. ALEXANDER.

H.R. 3993: Ms. HERSETH.

H.R. 4026: Mr. COLE.

H.R. 4051: Mr. PLATTS.

H.R. 4067: Ms. WATSON.

H.R. 4100: Mr. OBERSTAR.

H.R. 4113: Ms. HARRIS.

H.R. 4169: Mr. BOSWELL and Mr. LAHOOD.

H.R. 4232: Mr. STENHOLM.

H.R. 4341: Mr. COSTELLO.

H.R. 4356: Mr. OBERSTAR.

H.R. 4367: Mr. RYAN of Ohio, Mr. WEXLER, and Mr. LARSEN of Washington.

H.R. 4374: Mr. WEXLER.

H.R. 4420: Mr. BEAUPREZ, Mr. BISHOP of Utah, Mr. MORAN of Kansas, Mr. MOLLOHAN, Mr. HOEKSTRA, Mr. SAM JOHNSON of Texas, and Mr. EHLERS.

H.R. 4433: Ms. LEE, Mr. CUMMINGS, Mr. BOYD, and Mr. KING of New York.

H.R. 4578: Mr. LIPINSKI, Mr. SHIMKUS, and Mr. AKIN.

H.R. 4616: Mr. BROWN of Ohio and Mr. CUMMINGS.

H.R. 4622: Mr. OSBORNE.

H.R. 4626: Mr. RAMSTAD and Mr. GINGREY.

H.R. 4628: Mr. ISRAEL and Mr. HOUGHTON.

H.R. 4634: Mr. BURR and Mr. WELDON of Pennsylvania.

H.R. 4689: Mr. PASTOR.

H.R. 4711: Mr. STUPAK.

H.R. 4724: Mr. ETHERIDGE and Mr. GORDON.

H.R. 4779: Mr. COOPER and Mr. HOLDEN.

H.R. 4826: Mr. INSLEE, Mr. UDALL of Colorado, Mr. McHUGH, and Mr. PORTMAN.

H.R. 4866: Mrs. JOHNSON of Connecticut, Ms. McCOLLUM, Mr. ENGLISH, and Mr. GILLMOR.

H.R. 4875: Mr. STRICKLAND.

H.R. 4887: Mr. CHANDLER.

H.R. 4889: Mr. RANGEL and Mr. DAVIS of Florida.

H.R. 4924: Mr. BOYD, Mr. MICA, Mr. KELLER, Mr. DAVIS of Florida, Mr. FOLEY, Mr. MEEK of Florida, Ms. ROS-LEHTINEN, Mr. WEXLER, Mr. DEUTSCH, and Mr. HASTINGS of Florida.

H.R. 4927: Ms. BERKLEY, Ms. BALDWIN, and Mr. NETHERCUTT.

H.R. 4928: Ms. BORDALLO and Mr. ACEVEDO-VILA.

H.R. 4936: Mr. WAXMAN, Mr. BROWN of Ohio, Mr. PALLONE, Mrs. CAPPS, Ms. MCCARTHY of Missouri, Mr. ENGEL, Ms. ESHOO, Mr. TOWNS, Mr. JOHN, Mr. GREEN of Texas, and Mr. HOUGHTON.

H.R. 4956: Mr. DUNCAN.

H.R. 5001: Mr. FARR.

H.R. 5040: Mr. SCOTT of Georgia.

H.R. 5053: Mrs. MCCARTHY of New York and Mr. KING of New York.

H.R. 5057: Mrs. MALONEY, Mr. WEXLER, Mr. COOPER, Mr. WALSH, Mr. ETHERIDGE, Mr. STENHOLM, and Mr. MCINTYRE.

H. Con. Res. 111: Ms. CARSON of Indiana.

H. Con. Res. 218: Mr. FEENEY.

H. Con. Res. 468: Ms. JACKSON-LEE of Texas, Mr. MARKEY, Mr. DEFazio, Mr. GORDON, Mr. HONDA, Ms. BERKLEY.

H. Con. Res. 475: Mr. McHUGH and Mr. ACKERMAN.

H. Con. Res. 485: Mr. CASE.

H. Con. Res. 486: Mr. FROST, Mrs. MCCARTHY of New York, Mr. BUYER, Mr. BONNER, and Mr. BISHOP of Georgia.

H. Res. 125: Mr. GILLMOR.

H. Res. 556: Mrs. NAPOLITANO, Mrs. JO ANN DAVIS of Virginia, Mrs. CAPPS, Ms. MILLENDER-MCDONALD, and Mr. PAYNE.

H. Res. 690: Mr. ETHERIDGE.

H. Res. 752: Mr. AKIN, Mr. SMITH of New Jersey, and Mr. KING of Iowa.

H. Res. 761: Mr. BACA, Mr. MORAN of Virginia, Mr. CARSON of Oklahoma, Mr. CANNON, Mr. THOMPSON of California, Mr. WEINER, Mr. STRICKLAND, Mr. SHAYS, Mr. WU, Mr. WAMP, Mr. SHAW, Mr. MCGOVERN, Mr. RUPPERSBERGER, Mr. ROSS, Mr. SNYDER, Ms. LINDA T. SANCHEZ of California, Mrs. NAPOLITANO, Mr. RYAN of Ohio, Mr. WAXMAN, Mr. SCOTT of Georgia, and Mr. OLVER.

AMENDMENTS

Under clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 5025

OFFERED BY: Mr. JEFFERSON

AMENDMENT No. 8: Page 13, strike lines 11 through 14.

H.R. 5025

OFFERED BY: Mr. POMBO

AMENDMENT No. 9: At the end of the bill before the short title, insert the following:

SEC. 647. None of the funds made available in this Act shall be available for the development or dissemination by the Federal Highway Administration of any version of a programmatic agreement which regards the Dwight D. Eisenhower National System of Interstate and Defense Highways as eligible for inclusion on the National Register of Historic Places.

H.R. 5025

OFFERED BY: Mrs. CAPITO

AMENDMENT No. 10: Page 166, after line 3, insert the following new section:

SEC. 647. None of the funds appropriated by the Act may be used to plan, enter into, implement, or provide oversight of contracts between the Secretary of the Treasury, or his designee, and any private collection agency.

H.R. 5025

OFFERED BY: Mr. VAN HOLLEN

AMENDMENT No. 11: At the end of the bill (before the short title), insert the following:

SEC. ____ None of the funds made available by this Act may be used to implement the revision to Office of Management and Budget Circular A-76 made on May 29, 2003.