

shout, “Wolf, wolf, wolf,” and win an election. But you can’t stifle democracy and cling to power. The American people have had enough.

The Republican leadership believes that they are going to have the last word today, but, fortunately, on November 7, the American people are going to choose a new direction. They don’t want any more of this. They have watched it, they have given the President support, they have given him leeway, and what have they gotten? A war that is making more unsafe our world, and Americans want a new direction. They are going to get it on November 7.

□ 0915

GOP PREPARES TO LEAVE WITHOUT HOLDING ADMINISTRATION ACCOUNTABLE ON IRAQ

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

Mr. PALLONE. Mr. Speaker, despite countless assurances from the President that we are safer now than we were before 9/11, this past week we learned the truth: The world is more dangerous today than it was pre-9/11, and the war in Iraq is the main reason why.

This weekend on “60 Minutes,” Bob Woodward will report that our intelligence agencies predict that 2007 is going to be more deadly for American troops than 2006. That is a dire prediction considering that insurgent attacks against our troops are now occurring every 15 minutes.

These reports from our intelligence agencies should serve as a wake-up call to House Republicans who for 3 years have sat on the sidelines neglecting their oversight responsibility of the war in Iraq.

How bad do things have to get in Iraq before this Republican do-nothing Congress actually takes action? When will they finally begin asking questions? When will they finally begin to hold Secretary Rumsfeld and others in the President’s War Cabinet accountable for their incompetence?

Mr. Speaker, the American people deserve a Congress that will take its oversight responsibilities seriously. It is time for a change here in Congress, and it is coming this November.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 5441, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2007; PROVIDING FOR CONSIDERATION OF S. 3930, MILITARY COMMISSIONS ACT OF 2006; PROVIDING FOR CONSIDERATION OF H.R. 4772, PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 2006

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I

call up House Resolution 1054 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1054

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 5441) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2007, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

SEC. 2. 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 (S. 3930) to authorize trial by military commission for violations of the law of war, and for other purposes. The bill shall be considered as read. The previous question shall be considered as ordered on the bill to final passage without intervening motion except: (1) one hour of debate, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; and (2) one motion to commit.

SEC. 3. 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. 4772) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes. 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 bill, as amended, shall be considered as read. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) one hour of debate equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; and (2) 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 gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, the rule before us today will provide for consideration of three measures of vital importance to our Nation: The conference report for Fiscal Year 2007 Homeland Security Appropriations bill, the Private Property Rights Implementation Act of 2006 and the Military Commissions Act of 2006. This rule will enable the House to consider these bills and complete this important work on behalf of the American people.

Mr. Speaker, I rise today in strong support of this rule and the underlying legislation. These three bills address some of our Nation’s most pressing priorities. First, the Homeland Security

Appropriations Conference Report funds our most important Federal programs aimed at securing the Nation against terrorist attacks. It provides \$34.8 billion for the operations and activities of the Department of Homeland Security in fiscal year 2007, an increase of \$2.3 billion over fiscal year 2006 and \$2.7 billion above the President’s request.

The conference agreement aggressively addresses our most critical homeland security needs, including border and immigration security; nuclear detection; port, cargo and container security; transportation security; natural disaster preparedness and response; and support to State and local first responders.

This legislation secures our homeland first and foremost by protecting our borders and revitalizing immigration enforcement, because border security is homeland security. It provides over \$21 billion for border protection, immigration enforcement and related activities. It includes an increase of \$2.1 billion over funding in 2006. This includes \$5.2 billion for the Secure Border Initiative and additional funding to support technology, personnel and infrastructure to prevent terrorists and other criminals from exploiting our borders and immigration system.

Among other security-enhancing measures, this funding includes \$2.77 billion for Border Patrol, adding 1,500 new Border Patrol agents, for a total of 14,800. It includes \$1.2 billion for border fencing, vehicle barriers, technology and infrastructure; \$4.2 billion for immigration and customs enforcement; \$1.38 billion for Immigration and Custody Enforcement custody operations, adding 6,700 detention beds, for a total of 27,500; and \$28.2 million to assist State and local efforts to enforce immigration laws.

This conference report also recognizes the need to enhance port, container and cargo security by providing the funds necessary to secure our ports and inbound cargo in order to prevent terrorists and criminals from exploiting the international commerce system.

It supports our first responders by paying attention to the needs of high-threat areas, firefighters and emergency management. It supports ongoing efforts to enhance the current inventory of our Nation’s critical infrastructures, develop secure communication systems with Federal, State and local entities, and it continues to work with the private sector to implement protective measures around the Nation’s infrastructure.

This agreement continues ongoing efforts to enhance security for all modes of transportation, including ports, rails and aviation with a focus on developing and installing next-generation technology to inspect cargo, baggage and passengers. And it supports traditional missions, such as drug interdiction, law enforcement, maritime safety and Presidential protection.

Finally, this conference report provides for the necessary and appropriate oversight of the Department of Homeland Security. It fences off \$1.6 billion from being spent until DHS meets certain planning and management requirements. Under these requirements, DHS must develop a comprehensive strategy and plan for port, cargo, container security, and for the Secure Border Initiative. Department of Homeland Security must also provide expenditure plans for the border security system, U.S.-VISIT, Federal Protective Service, business transformation for CIS, explosive detection systems in airports, Customs information technology systems, and overall better financial data throughout the department, and in particular, science and technology.

Finally, the agreement directs the preparedness Directorate and FEMA to improve its capacities in communications, training and other capacity assessments, including management logistics, emergency housing, debris removal and victim registration.

Second, this rule provides for consideration of the Military Commissions Act of 2006 as modified by the other body. The House version of this legislation passed the House on Wednesday by a vote of 253-168 and was sent to the other body. Today's legislation again provides congressional authorization for military commissions to try alien unlawful enemy combatants for war crimes committed before, on or after 9/11/2001. It amends the War Crimes Act to criminalize grave breaches of Common Article 3 of the Geneva Conventions, while fully satisfying U.S. treaty obligations. It also authorizes the establishment of military commissions to try alien unlawful enemy combatants, which is the legal term used to define international terrorists and those who aid and support them, for war crimes. While this new chapter is based upon the Code of Military Justice, it also creates an entirely new structure for these trials.

These commissions will only be used to try alien terrorists for war crimes. Any U.S. citizen will be tried within the Federal United States judiciary. These alien terrorists acquitted of a war crime will still be detained as enemy combatants according to the principle in international law that there exists an undisputable right to keep the enemy from returning to the battlefield. Thus, an acquittal at a war crime trial will not result in terrorists being released. This legislation also provides for an independent certified military judge to preside over all proceedings.

This agreement creates the process necessary to prosecute terrorists effectively and fairly, while also protecting American troops and intelligence agents fighting the global war on terror.

I would like to thank Chairman DUNCAN HUNTER and Chairman SENSENBRENNER for all of their hard work in reaching an agreement with the other

body that keeps Americans safe while observing the rule of law.

Third, this rule provides for the consideration of legislation to give private property owners the ability to litigate cases in Federal court when local and State regulations deprive owners the use of their own land.

Although this legislation already passed the House this week with the support of the majority of its Members, it did not achieve the support of the super majority needed to pass under the suspension of the rules.

So, today, the House will once again have the opportunity to support this commonsense bill to ensure that property owners have the same access to Federal courts as other plaintiffs claiming a violation of their constitutional rights.

It removes the judicial detour of forcing claimants raising solely Federal claims to first pursue their litigation in State court on the very same case and dramatically reduces the amount of time that property owners must spend in negotiation and litigation before takings claims that can be heard on their merits.

I congratulate the gentleman from Ohio (Mr. CHABOT) for all of his hard work in constructing and perfecting this legislation, and I look forward to supporting his efforts on the floor later this afternoon.

Mr. Speaker, I am proud of this work product that the majority has brought to the floor today. I encourage all of my colleagues to support this rule and the underlying legislation that will keep Americans safer, uphold the rule of law and protect the private property rights of citizens. I encourage each of my colleagues to join me in supporting this rule and the three underlying bills.

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

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

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Texas for yielding me this time.

Mr. Speaker, these are not the circumstances under which we should be considering this legislation. The bills before us deal with nothing less than the security of our homeland and the fundamental nature of our Nation. Our citizens deserve better than to have their elected representatives rush to pass all of these bills in one day, bills that say a great deal about who we are as a society and where we are headed as a country.

The Homeland Security Appropriations Conference Report and the Military Commissions Act before us are manifestations of how this country has chosen to respond to the challenges that confront us, challenges to our safety and our peace of mind.

□ 0930

Will we respond with flawed acts that undermine our economic vitality and

sacrifice the very liberties we are theoretically fighting to protect? Or will we be measured in our response and do what is necessary to preserve our liberty from both threats abroad and the consequences of fear and mistrust here at home?

Mr. Speaker, this homeland security legislation means a great deal to my constituents in western New York and to the tens of millions of Americans who live in northern border communities throughout our country.

Our relationship with Canada is truly a unique one. Ours is the longest unguarded border in the world, a demonstration of the spirit of trust and openness shared by our two great nations. That spirit has produced and sustained a thriving cross-border tourism industry and hundreds of billions of dollars in trade between our two countries every year.

Border economies on both sides of the divide depend on that trade and tourism. So it would be shortsighted and self-destructive to permit a flawed border security plan to cut off such a lifeline. Unfortunately, the Western Hemisphere Travel Initiative, put forth with so much fanfare by the Department of Homeland Security and the Department of State, threatens to do just that. In the name of heightened security, this plan, if implemented in its current form, will mean that millions of tourists from both countries will stay home and businesses will stop shipping their goods across the border. In its current form, this plan is a disaster waiting to happen. And considering that Canada is our largest trading partner, we have no choice but to fix it before it is too late. And what we need first is an extension of the WHTI implementation deadline, which I am relieved to see is still in this bill. Backing up the implementation until June or at least January of 2009 will give us the time we need to fix this program where it is broken.

My colleague and good friend from New York Representative MCHUGH and I have fashioned a bipartisan, commonsense bill that will correct the most egregious failings of WHTI and make it work for our constituents instead of against them. The Protecting American Commerce and Travel Act, or PACT Act, has gained the support of a wide range of Representatives in this body. It will ensure border security while at the same time keeping it open to travel and trade. I urge all of my colleagues to consider and pass the PACT Act in the months ahead. We don't have to choose between economic security and physical security. We can and we must have both.

Mr. Speaker, the Western Hemisphere Travel Initiative was a flawed reaction to a perceived threat and today threatens the liberty and prosperity of our country more than those it supposedly protects us from.

In the same way, the Military Commissions Act before us represents a shocking assault on the fundamental

freedoms and liberties that we have been told we are fighting to defend. This bill will dramatically increase the President's right to detain men and women the world over and to hold them indefinitely without charge. What is more, it will serve as a backdoor legalization of all but the most brutal of interrogation methods, taking our Nation down a path that we have chastised so many other countries for following.

Yesterday in the Senate, my friend and New York delegation colleague, Senator HILLARY CLINTON, told a story about our country's first great military leader, a man who went on to become our first great political leader.

On Christmas Day in 1776, in the midst of the Revolutionary War, General George Washington launched a daring raid that culminated in the capture of numerous Hessian soldiers. They were foreign mercenaries known for their brutality and who were fighting for the British. Despite what they had done to American soldiers, he ordered his men to treat them humanely. He said, "Let them have not reason to complain of our copying the brutal example of the British Army."

George Washington, the man who so influenced our national consciousness, who was so deeply responsible for who we are as a people, wanted the world to know that the new American Army did not abuse its prisoners of war. He also wanted to do whatever he could to win the hearts and minds of the Hessians. If even one came to see the virtue of America and lay down his arms, that would be a victory in the fight for our Nation's freedom and independence.

Mr. Speaker, I think we have heard some of the best arguments against this bill from General Washington's successors: the men and women who have held top positions of responsibility in our Armed Forces. They have told us over and over again that if we ignore our country's longstanding commitment to the rules of war and international treaties like the Geneva Conventions, we will be putting our own soldiers and our own Nation at risk. Opening the door to detainee abuse and indefinite detention will make our soldiers more likely to be tortured and dehumanized so that they fall into enemy hands, and that means our own country will be less safe.

A world based on the rule of law is more safe, not less safe, than a world based on power alone. To argue that those who oppose this detainee bill want to let terrorists roam free is both wrong and illogical. Suspected terrorists who have evidence against them will be convicted by courts of law. They will stay behind bars. At the same time, a steadfast commitment to due process will both defend our most cherished freedoms and free the innocent from unwarranted punishment. Doing so will protect our liberty and deprive our enemies of one of the main tools that they are using to recruit their new followers.

We will show the world that the United States practices what it preaches about freedom and democracy and human dignity. We will bring others over to our side and make them less likely to take up arms against us.

There is a reason why Colin Powell recently warned us that the world is beginning to doubt the moral basis of our fight on terrorism. He said it because it is true and because such a reality is a truly dangerous one. What is more, humane interrogation methods will prevent us from chasing after ghosts, from following the fleeting leads of false confessions born not from knowledge but from desperation.

General Washington saw the value of a world based on law and principle over 200 years ago, and he saw it at a time when his fledgling Nation was truly in a fight for its very survival. And for us to pass a bill today that abandons some of the most fundamental principles of the civilization that we have sworn to defend would be an insult to all those who came before us, to all those who fought and struggled so that we could live free.

Mr. Speaker, it is such a respect for law and eternal principles that this administration and far too many in this Republican leadership lack. The proof lies in a provision of this bill which has received so little notice it is shameful but that is profoundly revealing about its true nature.

Ten years ago Congress passed a law called the War Crimes Act. Under that bill violating the Geneva Conventions is a crime in the United States. The administration argued that the Convention does not apply to enemy combatants, a term of its own invention. But the Supreme Court disagreed. In other words, the administration officials who have spent the last 5 years creating and directing our torture policy, as well as the government employees who have carried it out, could be liable for criminal prosecution for violating the War Crimes Act.

And so they have decided in this bill to go back in time to 1997 and to rewrite the War Crimes Act to make their actions legal. And that is exactly what this bill does. To call this strategy cynical and self-serving, Mr. Speaker, is an understatement. When President Bush signs this bill, he will be signing away any responsibility for the potentially criminal policies that he and those in his administration have enacted during the past 5 years. When he signs this bill, he will be signing a pardon for himself and for all other architects of these disastrous, self-defeating, and immoral policies.

But we have a choice here today. We can take a principled stand on behalf of the principles that make us great. We can choose to reject a future in which America can no longer honestly claim that it respects human rights, a future in which our own shortsighted, selfish, and immoral retreat into fear and suspicion has left us less safe and more isolated than ever before. We can

choose to embrace our true nature and, in so doing, take a great step toward the creation of a world led by law and free from fear.

It is our choice, Mr. Speaker. And I implore all of my friends in this body, please, let us today make the right one.

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

Mr. SESSIONS. Mr. Speaker, during the last few years, Members of Congress have spoken very plainly and openly to this administration about our thoughts and ideas and hopes and dreams, about how we can better protect not only this country and our borders but the rule of law, and this administration has been very open to hearing from Members of Congress about these thoughts and concerns.

Our next speaker is a gentleman who has engaged the administration, has talked about how important border initiatives are, to make sure that not only are we secure on our border but to make sure that we deal effectively and carefully with people who have come to this country, to make sure that they are safe, to make sure that they are not harmed in that process. If they have broken the law, they will take the full measure of law as it is given, but that we do so in a compassionate way.

Our next speaker is the chairman of the Rules Committee, the gentleman from California (Mr. DREIER), and I yield to him such time as he may consume.

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

Mr. DREIER. Mr. Speaker, I thank my friend for his very kind words, but we do want to adjourn by this evening; so I appreciate the fact that he kept it relatively brief. And I want to thank him for his typical superb management of this very important rule and to say that I am very pleased that we have been able to work in a bipartisan way.

At least two of the three provisions in this rule deal with the single most important issue that we face: the security of the American people. Our Homeland Security appropriations bill and I believe this tribunal bill, which will be made in order under this rule, is critical to the security of the United States of America, and that is our top priority.

I guess I should begin, since he is looking so relaxed there, by saying time and time again in the Rules Committee, my colleague Ms. SLAUGHTER and others said that it was MARTIN SABO's last appearance before the Rules Committee. Well, I had every confidence, when people joked about the prospect of bringing a conference agreement back on the Homeland Security appropriations bill, that it would happen. And many people rolled their eyes. But thanks to the leadership of MARTIN SABO and HAROLD ROGERS and, of course, DAVID OBEY and JERRY LEWIS, we have been able to come together with a very important

Homeland Security appropriations conference report.

So I would like to join in extending great appreciation to MARTIN SABO for his stellar service to this body over the years and for his commitment to dealing with transportation issues and now homeland security and to say that we will miss him greatly.

This measure, Mr. Speaker, that we are going to consider, the appropriations bill itself, is absolutely essential if we are going to focus on the security of our borders and deal with it in a responsible way. And I am happy that Ms. SLAUGHTER was able to work on her compromise. Again, it is a bipartisan compromise, as she just said in her statement, that we have been able to deal with.

And similarly, I am proud of another item that is included in this bill that is once again a bipartisan measure, and that is legislation that was introduced in the Senate by my California colleague, DIANNE FEINSTEIN, and I was privileged to introduce it here in the House. We had an actual unanimous recorded vote on this measure, and it was to recognize that we have a problem at our border; that being since September 11, 2001, the discovery of 38 tunnels, one of which came from Canada into the United States, 37 from Mexico into the United States. And what we discovered is that there is actually no criminal penalty for people who are tunneling or the utilization of property here in the United States for tunnels to come up. And what has happened? Through those tunnels we have seen tremendous problems with both human and narco-trafficking.

So in this measure that we pass, we will be actually implementing criminalization of that kind of action, once again demonstrating our commitment to securing our Nation's border.

Similarly, we obviously are very concerned about the fact that in heavy urban areas and in five particular areas, we have seen just across the border, above ground, large problems of human and narco-trafficking, and for those areas we are going to see the construction of border fences.

I do not like the idea of fences. I really do not like the idea of fences at all. But our empirical evidence, Mr. Speaker, has shown that for the 14 miles along the border between Tijuana, Mexico, and San Diego, California, we have seen a great improvement in the standard of living and quality of life because of this border fence which has been established.

□ 0945

In fact, there has been a 50 percent reduction in the crime rate in San Diego, in large part attributed to the fact that we have this fence here.

I look forward to the day when we will be able to take down all of these fences. But, frankly, as long as we have human trafficking and narco-trafficking the way it is today, I do not believe that we as a Nation have a choice. And

so in those areas where we have heavy urban populations on both sides the border, I think it is essential that we do this.

There are other areas where utilization of 21st century technology, using motion detectors, using unmanned aerial vehicles and other things will be very beneficial in our quest to ensure that we secure our Nation's borders.

Now, as we look at our items in this bill, I believe that the funding that is provided is going to help us deal with the overall global war on terror. Again, if you think about the preamble of the U.S. Constitution, I always argue that, in that preamble, the five most important words of the preamble are: Provide for the common defense.

And those five words, I believe, are addressed very successfully with this Homeland Security Appropriations Conference Report. So, Mr. Speaker, I am very proud of the work that has been done in a bipartisan way, Democrats and Republicans coming together, to do the right thing.

I hope it can be used as a model for many of the things that we proceed with in the future.

Ms. SLAUGHTER. Mr. Speaker, I yield 6 minutes to the gentleman from Minnesota (Mr. SABO).

Mr. SABO. Mr. Speaker, I thank the gentlewoman for yielding me time. Thank you for your great service on Rules Committee.

And to the chairman, I thank him for his kind remarks.

Mr. Speaker, I am a strong supporter of the base bill on homeland security funding. But there is one part of that bill which I think we could significantly improve. So I would ask Members today to vote against the previous question so that we can offer a separate concurrent resolution to the conference report which would delete from the bill four provisions as it relates to the regulation of chemical plants that, in my judgment, significantly weaken the legislation.

As background, the whole question of setting security standards for chemical plants is an issue that has concerned me for a long time. We have had a void in the ability of the Secretary to act to adopt any regulation as it impacts most chemical plants in this country.

This year, while we were considering the appropriations bill, we offered and adopted in committee an amendment that gave authority to the Secretary to adopt regulations relating to the security of chemical plants.

We envisioned that as being a temporary solution, while the authorizers had time at some point to pass regular authorizing legislation. That was stricken by a point of view on the House floor. In the Senate, fortunately, in an amendment by BOB BYRD, adopted that same amendment. And that is what we had in conference.

There then proceeded negotiations between the authorizers. And it ended up being a partisan negotiation between majority Members in the House

and Senate which produced the recommended plan for the regulation of chemical plants, which the conference committee substituted for the Byrd amendment.

That more detailed recommendation has not been subject to debate in either the House or the Senate or considered in that form by any of our committees. And it has four provisions which I think significantly weakens the authority of the Secretary to adopt regulations. I think we should strike them.

The first one is a provision that states that: The Secretary may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure.

What that means, I frankly do not know. The reality is that any security measure is going to deal with a whole series of particular security measures. Some are going to be more important than the other. Why we limit the authority of the Secretary in this fashion is beyond me. I do not know what it means. There must be some relevance to it. But it clearly would seem to limit the ability of the Secretary to adopt a comprehensive security measure.

Then we have another provision which is rather strange. And it says that if we proceed in court and any information is provided on plants to that court, then that unclassified information becomes classified when it reaches the courtroom. I know of no other instance in our government where unclassified information becomes classified because it goes to court.

I have no idea what the precedent for any such action is. It is unique. It is new. And we should not have it in this bill. I do not know, as I read this bill, whether the States have the ability to adopt security standards which are stricter than the Federal law. Some read this language to say it prohibits the States from having stricter standards.

I read it as being unclear, and where we turn that issue over is not to our judgment but to the courts. As I read the language, if a State adopts stricter standards and the Secretary approves them, I expect it will be challenged in court. If they adopt stricter standards and the Secretary rejects them, that will be challenged in court.

In my judgment, the States should have that ability. But whether we think they should or should not have it, it is a decision we should make and not simply leave it to the vagaries of what a particular court might decide.

Another provision in this bill simply says that it prohibits the public from filing any suit to enforce the provisions of this law. Again, that makes no sense to me and goes contrary to what we normally do in this country.

I am glad we are finally moving forward with chemical plant security. However, the negotiations, not by the conferees on the appropriation bill but by the negotiators from the two authorizing committees, have produced a

version of chemical security regulation that in my judgment is much weaker than it need be, and we should clarify it and strike those provisions. Not add anything new, but simply make sure that the Secretary has greater authority and to make sure that States have the right to adopt stricter regulation if they so desire.

So I urge the rejection of the previous question so that we can offer such an amendment.

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

Mr. Speaker, in the month of August, I had an opportunity with several other Members to go to Laredo, Texas, to visit our border to see the border operations and to see the things that were happening there. I had a chance to run across Texas Army National Guard personnel who were attempting to not only work but work successfully with Border Patrol and other Customs and Immigration enforcement personnel.

I wanted to draw attention to how important our National Guard has been from each of our States in protecting our borders, working on border security and doing those things that are necessary. This came as a result of a plan that happened with input from Congress, that happened through the great work that was done not only with the President but also with local Governors and people who are interested in doing this.

I had a chance to go with the Honorable JO BONNER from Alabama down to Laredo. And both he and I together had a chance to see firsthand how the Army National Guard worked with Border Patrol. We went out that night to see firsthand their needs.

Mr. Speaker, that is what is in this bill, the ability that we have to protect our border, to provide the necessary resources, to make sure that our men and women who are with official law enforcement and also those who are with the Guard are able to make sure that this country is protected.

That is what is in this bill. I am proud of it. I am going to ask for everyone's vote for not only the rule but also the underlying legislation.

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

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. PALLONE).

Mr. PALLONE. Mr. Speaker, I rise in strong opposition to this rule because the legislation would seriously undermine efforts to secure chemical facilities across the country. I want to join in the comments made by the ranking member, Mr. SABO.

Back in July, the Homeland Security Committee passed by voice vote a bill that would go a long way towards fixing the chemical security problem in the aftermath of 9/11. This is one of the most glaring problems in our post-9/11 security efforts that has been neglected here in Washington by the Congress and by the administration.

Yet rather than moving forward with this bill out of the Homeland Security

Committee, bringing to it the floor and having an open debate; Republicans have decided to craft an industry-friendly proposal behind closed doors and stick it in the Homeland Security Appropriations Conference Report.

Now, this is no way to deal with such a serious security issue. EPA data indicates that there are more than 100 chemical plants across the country that could put over 1 million people at risk in the event of a serious accident or terrorist attack. More than 7,000 chemical plants could put 1,000 people or more at risk.

Yet under the cover of a conference report, the Republican leadership has seriously undermined our efforts to secure these chemical facilities. The language here exempts thousands of chemical plants not deemed "high risk" by the Department of Homeland Security, along with 3,000 drinking water and wastewater facilities that use large quantities of chlorine.

It also prohibits the Department of Homeland Security from doing anything to move towards the use of inherently safer technologies or substances. And it fails to protect the rights of States like my own, New Jersey, to implement stronger security requirements at chemical plants.

Mr. Speaker, the consequences of an incident at a chemical facility could be dire for residents of my State of New Jersey. We saw this last Tuesday when an accidental release of sulfur dioxide sent 59 people to the hospital. If that is what happens from one simple mistake, I shudder to think of the consequences of an attack by determined terrorists.

We need to reject this rule. Strip this weak chemical security language from the conference report and move ahead with strong legislation like what the Homeland Security Committee already passed here in the House.

Mr. SESSIONS. Mr. Speaker, here we are talking about the rule for Homeland Security, and yesterday, the Rules Committee had an opportunity to speak very plainly with the appropriators who were responsible for this Homeland Security appropriations bill. We spoke with them about several matters. One of them was about the air marine operation under the CBP, Customs and Border Protection.

I would like for my colleagues to know, who have joined me and others in the effort to talk about the air interdiction program that we have about drugs that come into this country, that this bill provides \$600 million for their border and air space protection.

Secondly, we had an opportunity to talk about the fugitive operation teams that nationwide are gathered together under Customs and Border Protection to make sure that the apprehension of those people who are illegal aliens that are in our country here who are fugitives and who are dangerous are picked up and dealt with by our judicial system in this country.

Over and over and over, the things that we have talked about that were

necessary and needed throughout the years are contained with funding in this bill. I am very happy to say that I am proud of what this administration has done by listening to us, and perhaps more importantly, our appropriators, like HAL ROGERS who brought this bill, who listened and who have done something about it.

□ 1000

Mr. Speaker, I yield 5 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank my Rules Committee colleague for yielding the time.

I rise in support today for this rule and, of course, the underlying conference report, H.R. 5441, the Department of Homeland Security Appropriations Act for Fiscal Year 2007. I would like to commend Chairmen Lewis and Rogers and, of course, our dear friend Martin Sabo for their tireless effort in keeping our homeland safe.

H.R. 5441 is one more piece of pro-security legislation advanced by this Congress, and its passage prior to our adjournment, Mr. Speaker, is critical to ensuring funding for homeland security programs that do keep our Nation safe.

This is a comprehensive bill. It addresses several aspects of our porous border problem. It provides increased technologies for use in explosion detection. It beefs up maritime and chemical security and, most importantly, overhauls FEMA.

As we know a big part of keeping our homeland safe is protecting these borders. The bill includes \$1.8 billion in emergency funding for border and maritime security. It includes \$1.2 billion for the construction of a border fence, and it provides for the hiring of an additional 1,500 border patrol agents and includes a commonsense provision brought forth by our chairman of the Rules Committee criminalizing the construction of border tunnels.

However, Mr. Speaker, despite the great things in this legislation, I realize that it is not a perfect bill. One of the most notable problems is securing our ports of entry with better background check technology. As you remember, we passed language in the 9/11 bill and in the REAL ID Act last year to require biometric passports by a certain deadline, along with the proper equipment to read the high-tech identification. The deadline was extended 6 months, and with this appropriation bill, unfortunately, it is extended another 17 months because someone in the other Chamber from a northern border State put language in there to further delay this crucial, crucial program. We cannot afford to keep extending the deadline when our security is at stake.

Mr. Speaker, shoe bomber Richard Reed, we all remember him, entered our country on an unsecured visa waiver. This visa waiver program allows 28 countries, their folks, to come into this

country with nothing, really, to prove their identification. He came in with a visa waiver. We have to know who is coming into our country to prevent terrorists from having a free pass.

Despite all the improvements made in this appropriations bill, they are meaningless without securing our ports of entry.

Mr. Speaker, all week long we have witnessed this Congress passing legislation to fund critical Department of Defense programs, to try terrorist detainees in military courts and to listen in on the communications of terrorist operatives plotting our destruction. Heather Wilson from New Mexico explained that so well yesterday on this floor.

It is unfortunate that throughout this week we have witnessed obstructionism on just about every front and some on the other side advocating for a cautious approach to fighting terrorism out of concern of treating the terrorists fairly. In my opinion, Mr. Speaker, this is the wrong approach, and we must remain aggressive in our efforts to keep America safe.

I encourage all of my colleagues on both sides of the aisle to keep this in mind, to ensure we give our government the tools it needs to protect our homeland.

I urge support of this rule and the underlying legislation.

Ms. SLAUGHTER. Mr. Speaker, I yield 3½ minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentlewoman's courtesy and her leadership.

This is sort of a bizarre rule that is limiting debate on three very critical areas, but I would like to just focus on one because under the guise of protecting property rights, H.R. 4772 is back before us, and it will undermine the quality of life for most Americans.

I find no small amount of irony that our friends on the Republican side of the aisle who say that they support local control are now going to gut some of the most basic protections for neighborhoods, businesses, and the environment to make sure that they are decided at the State and local level. Remember, these are our same friends who have come to us with provisions to strip away from these same Federal courts being able to rule on the Pledge of Allegiance or on marriage. Those are too important to be given to the Federal courts, but you are going to take away opportunities for people to be able to deal with the most fundamental of issues in terms of neighborhood quality and throw that into the Federal courts without having an opportunity to work it through at the State and local level.

The Supreme Court itself has recognized that State and local courts are the best way to deal with things that are inherently local in nature. I spent 10 years as a commissioner of public works in the city of Portland. I watched development proposal after

development proposal come over the transom. If your rules were in place, it would not help the little developer because they would not have the firepower to be able to go through the Federal process, but it would have been an amazing club for big developers to have their way for proposals that were incomplete, inadequate, or not carefully thought through. In some cases, there were things that were making mistakes. In others, they were trying to do something that would have threatened adjacent businesses, adjacent homeowners. What we did was work with them, going through the process, and as a result, time after time, we had better results.

This would undercut that effort. That is why 36 attorney generals, including Mr. CHABOT's attorney general, says that this is an unnecessary Federal intrusion and it ought to be resisted.

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

Our previous speaker has just hit on probably one of the most important aspects of freedom in America, and that is the right of a person to be able to own property, the ability that we have to have our house to be our castle. Yet as we talk about the issue, I would like to add my dimension to it.

The bottom line is that we are engaged in this on behalf of people who own property, people who own property who have grown weary of having local government take their property without due compensation for the benefit of local government, and we are going to protect the private property owner. We believe private property rights are very important, and that is why we are getting engaged, because we have seen local communities do for their own best interest those things that they wanted to do by taking private property from a person.

We believe it is a simple part of what the Constitution is about. We believe that private property rights are important. I do understand the argument, and it is related to a person who cannot fight government even in their own local community when that is what government wants to do.

We are going to give a level playing field to those individuals because we believe that the individualist who owns his own property should have equal rights also, not just to be taken advantage of by local communities.

Mr. Speaker, that is also in this rule. We support the underlying legislation.

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

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 5½ minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentlewoman very much, and this rule is just another appalling case of Republican leadership siding with special interests over the security interests of our country.

In July, the Homeland Security Committee reported a bipartisan chemical

security bill. We know that al Qaeda wants to hit huge chemical facilities in our country that could cause between 10,000 and hundreds of thousands of injuries. That was a good bill. It was bipartisan.

It required that there be mandatory enforceable security provisions that apply to all chemical facilities in America. It required the company shift to safer chemicals and methods to reduce the consequences of a terrorist attack. The bill ensured that the States could set higher security standards. The bill contained red teaming exercises to test whether or not security around these chemical facilities was, in fact, adequate. It contained worker training provisions to upgrade workers' ability to protect against an al Qaeda attack. It contained civil and criminal provisions, and it contained whistleblower protections for chemical industry workers if any Paul Revere-like figure would rise up to warn that there was a danger at a chemical facility.

Democrats and Republicans alike praised the committee's work, and Republicans promised to protect the language as it came out on to the House floor.

But instead, the House Republican leaders refused to allow it to be considered for a vote on the House floor. Instead, the Republicans on the Homeland Security Committee and on the Energy and Commerce Committee acquiesced to the wishes of the chemical industry behind closed doors to negotiate the weak, inadequate language contained in the conference report.

In public, the Republicans profess their support for strong chemical security legislation, but in private, they provided their chemical industry allies with an early Christmas present, the weak legislation the industry had been pursuing all along, and that is what we are now going to debate on this House floor; not the bipartisan secure chemical bill, but the chemical industry-written bill that the Republicans are now bringing out here in a closed rule that will not have any debate at all.

And by the way, if back home you have a Governor, you have a mayor that is very concerned about the ability of their hometown or their State to put stronger security measures around a chemical facility, well, after today you can just tell your Governor, your mayor, it is up to the Department of Homeland Security. They are not going to be able to increase it back at home. This bill is going to make it possible for the chemical industry to keep the local governments and the State governments wrapped up in red tape forever as those local communities, those local heroes, and by the way, if there is an al Qaeda attack, people are not going to call the Department of Homeland Security. They are going to call the local police, the local fire, the local emergency medical personnel. They are going to be the ones that have to respond, and when this bill is passed their hands are going to be tied behind

their back in terms of their ability to put stronger, tougher protections around these chemical facilities, especially in urban areas.

It also reduces the number of facilities that have to be covered. Instead of all of the facilities that could cause upwards of 10,000 fatalities or injuries, they eliminate 90 percent of the facilities from having to be covered by the provisions of the legislation that we are talking about here today. And by the way, the Department of Homeland Security is prohibited from disapproving of a facility's security plan because of the absence of any specific security measure.

So the Department of Homeland Security looks at a chemical facility, sees that there is a problem, they still cannot disapprove that plan. How in the world can the Department of Homeland Security be effective if their hands are tied behind their back? This is an area that we know is at the top of the al Qaeda terrorist target list, chemical facilities; and on the last day, professing to care about homeland security, and by the way, if al Qaeda is going to attack today, all the wire-tapping, everything else that you want to do, if there is a secret group already in America poised to hit a chemical facility, then you better have the protection that is built around it.

What you are doing today in this bill is you are making it infinitely more likely that al Qaeda can make a successful attack against a chemical facility. You are gagging the Democrats. You are handing it over to the chemical industry for them to decide on their bottom line cost-basis analysis of the type of security they want to put in place.

Right now, it is harder to get into some nightclubs in New York City than it is for al Qaeda to get into a chemical facility in the United States of America. That is the bottom line on the bill the Republicans are bringing out here today.

Vote "no" on this Republican rule.

□ 1015

Mr. SESSIONS. Mr. Speaker, I want to thank the gentleman for bringing this up as an issue, because I think, once again, it shows clearly the differences between our parties and the way we think about this.

It is true that the Republican Party would be accused of having a balanced approach not only to making sure that these chemical companies have taken care of their responsibility for security but making sure also that we protect the jobs that come with those and the security of the towns in which they are located in.

We heard the gentleman use words like stronger, tougher, harder and making it more difficult. Everything he talked about was to simply make it harder for these companies to operate in America. Tougher sanctions, more rules, more regulations and being tough on the chemical companies. Yes,

we get it, run them out of town. Run them out of the country. Take the jobs and leave.

Mr. Speaker, we are not going to do that in this bill. We are going to bring a balance, a balance that says that these chemical companies are a natural asset to the United States of America. As a part of our ability not only to make sure that we can receive the things that we need, technology and these things which chemical companies provide, that make our lives better every day, we are not going to run them out of town and we are not going to run them out of the country.

They have a responsibility to make sure that their internal elements are safe and the controls they put in place are doing the right thing. They want to take care of their responsibilities, and we are going to make sure that that is balanced. So we are not going to allow the tougher sanctions, the tougher things that our friends on the other side of the aisle want to do. We are going to strike a balance, a balance for safety, a balance for comprehension that what we want is to make sure that they are good corporate citizens and that they look closely at where their own frailties exist.

That is why this bill is going to pass today, because we are not going to run them out of town. We are not going to speak from a position of weakness; we are going to speak from a position of strength. That is another one of the differences between the Republican Party. We are going to balance it out and do the right thing.

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

Ms. SLAUGHTER. Mr. Speaker, I will use my remaining time to close, but, first, I wish to insert for the RECORD an editorial from this morning's New York Times called, "More Comfort for the Comfortable." That is the way they describe the Private Property Rights Implementation Act. They say it is a deeply misguided giveaway for big real estate developers.

[From the New York Times, Sept. 29, 2006.]

MORE COMFORT FOR THE COMFORTABLE

Congress, which has done so little this session to address the nation's real problems, is expected to vote today on a deeply misguided giveaway for big real estate developers. The bill would create new property rights that could in many cases make it difficult, if not impossible, for local governments to stop property owners from using their land in socially destructive ways. It should be defeated.

The Private Property Implementation Act would make it easier for developers challenging zoning decisions to bypass state courts and go to federal court, even if there was not a legitimate federal constitutional question. Zoning regulations are quintessentially local decisions. This bill would cast this tradition aside, and involve the federal government in issues like building density and lot sizes.

The bill would also make it easier for developers to sue when zoning decisions diminished the value of their property. Most zoning does that. Developers would make more money if they could cram more houses on

small lots, build skyscrapers 200 stories tall, or develop on endangered wetlands. The bill would help developers claim monetary compensation for run-of-the-mill zoning decisions on matters like these. It would also make it easier for them to intimidate local zoning authorities by threatening to run to federal court.

Zoning is not an attack on property rights. It is an important government function, and most Americans appreciate that it helps keep their own neighborhoods from becoming more crowded, polluted and dangerous. If more people knew the details of this bill, there would be wide opposition. As it is, attorneys general from more than 30 states, of both parties, have joined the U.S. Conference of Mayors, the National Conference of State Legislatures and leading environmental groups in opposing it.

The bill does a lot of things its supporters claim to abhor. House Republicans were elected on a commitment to states' rights and local autonomy, and opposition to excessive litigation and meddling federal judges. It is remarkable how quickly they have pushed these principles aside to come to the aid of big developers.

Mr. Speaker, I will be asking Members to vote "no" on the previous question. If the previous question is defeated, I will offer an amendment to the rule to instruct the enrolling clerk to strike from the conference report several last-minute provisions that may compromise chemical plant security.

Mr. Speaker, I ask unanimous consent that the text of the amendment be printed in the RECORD immediately before the vote on the previous question.

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

There was no objection.

Ms. SLAUGHTER. Mr. Speaker, these provisions were not in either the House or Senate-passed versions of the Homeland Security bill. They were drafted in secret and slipped into the conference report without the input of any Democrats in the conference. Even worse, these provisions may make chemical facilities more vulnerable to security problems and not less.

When we talk about balance, I think Homeland Security was supposed to be about rules and regulations. The new language weakens the Homeland Security Secretary's ability to enforce chemical facility site security plans. It takes the authority away. It allows the Secretary to preempt tougher State laws to ensure chemical facility security, and it severely restricts the rights of citizens to take any legal action to enforce chemical facility security requirements. Securing our chemical plants is far too important to be compromised by a secretive and inadequate security plan.

I want to stress that a "no" vote on the previous question will not stop consideration of the conference report, but a "no" vote will allow the House to remove these inadequate and dangerous provisions. Again, please vote "no" on the previous question.

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

Mr. SESSIONS. Mr. Speaker, I want to join my colleagues in thanking the

Honorable MARTIN SABO for his service to this House and for his additions of the things he has brought forth in this legislation, not only working in a bipartisan basis but also his leadership on behalf of making sure that the next generation understands things like port security and other things which the gentleman has specialized in.

Mr. Speaker, I would also like to thank our Speaker, DENNIS HASTERT, and majority leader, JOHN BOEHNER, for their vision and hard work to bring this bill forward today. They worked very closely with Chairman HAL ROGERS and Chairman JERRY LEWIS of the Appropriations Committee, DUNCAN HUNTER of the Armed Services Committee, Chairman JIM SENSENBRENNER of the Judiciary Committee, and certainly STEVE CHABOT of the Judiciary Committee.

This bill we bring forward today is a negotiated product, one where we have worked hard with not only members of the administration, but we have taken, as Members of Congress, trips to see our borders wherever they might be, the northern border or the southern border. We have our appropriators, who have taken time to understand the intricate details and the needs of this great Nation. We have engaged with the Department of Defense to talk about those things that will be necessary to protect our men and women on the battlefield. We have taken time to make sure that we have talked to our CIA, Central Intelligence Agency, about the way that they need to do business and those attributes about who they engage across the world and how we can treat fairly, yes, but treat properly those who would engage in killing Americans and bringing down reigning terror in our cities.

Mr. Speaker, I want to say that this underlying legislation is very important to America's learning lessons from the prior years and bringing those lessons to bear to protect this great Nation. We will speak from a position of strength, not fear. We will not worry about the things that we cannot get done but the things that we can get done. We will learn from our mistakes, and we will learn that, as terrorism in the 21st century evolves, we will, too. That is what these bills are all about.

I am proud of our country, and I say God bless America. Mr. Speaker, I ask for all the Members to support this bill.

The material previously referred to by Ms. SLAUGHTER is as follows:

PREVIOUS QUESTION FOR H. RES. 1054—RULE ON CONFERENCE REPORT FOR H.R. 5441 DEPARTMENT OF HOMELAND SECURITY FY07 APPROPRIATIONS

Strike all after the resolved clause and insert:

“That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 5441) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2007, and for other purposes. All points of order against the conference report and against its consideration

are waived. The conference report shall be considered as read.

Sec. 2. (a) A concurrent resolution specified in subsection (b) is hereby adopted.

(b) The concurrent resolution referred to in subsection (a) is a concurrent resolution

(1) which has no preamble;

(2) the title of which is as follows: “Providing for Corrections to the Enrollment of the Conference Report on the bill H.R. 5441”; and

(3) the text of which is as follows:

(1) In subsection (a), strike: “*Provided further*, That the Secretary may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure, but the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section: Provided further, That the Secretary may approve alternative security programs established by private section entities, Federal, State, or local authorities, or other applicable laws if the Secretary determines that the requirements of such programs meet the requirements of this section and the interim regulations.”

(2) In subsection (c), strike: “: *Provided further*, That in any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this section, and related vulnerability or security information, shall be treated as if the information were classified material”

(3) In subsection (d), strike: “: Provided, That nothing in this section confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this section”

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Republican majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives, (VI, 308-311) describes the vote on the previous question on the rule as “a motion to direct or control the consideration of the subject before the House being made by the Member in charge.” To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that “the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition” in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R-Illinois) said: “The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition.”

Because the vote today may look bad for the Republican majority they will say “the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution * * * [and] has no substantive legislative or policy implications whatsoever.” But that is not what they have always said. Listen to the Repub-

lican Leadership Manual on the Legislative Process in the United States House of Representatives, (6th edition, page 135). Here's how the Republicans describe the previous question vote in their own manual: Although it is generally not possible to amend the rule because the majority Member controlling the time will not yield for the purpose of offering an amendment, the same result may be achieved by voting down the previous question on the rule * * * When the motion for the previous question is defeated, control of the time passes to the Member who led the opposition to ordering the previous question. That Member, because he then controls the time, may offer an amendment to the rule, or yield for the purpose of amendment.”

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled “Amending Special Rules” states: “a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate.” (Chapter 21, section 21.2) Section 21.3 continues: Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon.”

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Republican majority's agenda to offer an alternative plan.

Mr. SESSIONS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. 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.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the grounds 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 221, nays 186, not voting 25, as follows:

[Roll No. 504]

YEAS—221

Aderholt	Bonilla	Chocola
Akin	Bonner	Coble
Alexander	Bono	Cole (OK)
Bachus	Boozman	Conaway
Baker	Boustany	Crenshaw
Barrett (SC)	Bradley (NH)	Culberson
Barrow	Brady (TX)	Davis (KY)
Bartlett (MD)	Brown (SC)	Davis, Jo Ann
Barton (TX)	Brown-Waite,	Davis, Tom
Bass	Ginny	Deal (GA)
Beauprez	Buyer	Dent
Biggert	Calvert	Diaz-Balart, L.
Bilbray	Camp (MI)	Diaz-Balart, M.
Bilirakis	Campbell (CA)	Doolittle
Bishop (UT)	Cannon	Drake
Blackburn	Cantor	Dreier
Blunt	Capito	Duncan
Boehrlert	Carter	Ehlers
Boehner	Chabot	Emerson

English (PA) Kingston
Everett Kirk
Feeney Kline
Ferguson Knollenberg
Fitzpatrick (PA) Regula
Flake Kuhl (NY)
Foley LaHood
Forbes Latham
Fortenberry LaTourette
Fossella Lewis (CA)
Foxy Lewis (KY)
Franks (AZ) Linder
Frelinghuysen Linder
Gallegly LoBiondo
Garrett (NJ) Lucas
Gerlach Lungren, Daniel
Gibbons E.
Gilchrest Mack
Gillmor Manzullo
Gingrey Marchant
Gohmert Marshall
Goode McCaul (TX)
Goodlatte McCotter
Granger McCrery
Graves McHenry
Green (WI) McHugh
Gutknecht McMorris
Hall Rodgers
Harris Melancon
Hart Mica
Hastings (WA) Miller (FL)
Hayes Miller (MI)
Hayworth Miller, Gary
Hefley Moran (KS)
Hensarling Murphy
Herger Musgrave
Hobson Myrick
Hoekstra Neugebauer
Hostettler Northup
Hulshof Norwood
Hunter Nunes
Hyde Nussle
Inglis (SC) Osborne
Issa Otter
Istook Oxley
Jenkins Pearce
Jindal Pence
Johnson (CT) Peterson (PA)
Johnson (IL) Petri
Johnson, Sam Pickering
Jones (NC) Pitts
Keller Platts
Kelly Whitfield
Kennedy (MN) Pombo
King (IA) Porter
King (NY) Price (GA)

NAYS—186

Abercrombie Davis (TN)
Ackerman DeFazio
Allen DeGette
Andrews Delahunt
Baca DeLauro
Baird Dicks
Baldwin Dingell
Bean Doggett
Becerra Doyle
Berkley Edwards
Berman Emanuel
Berry Engel
Bishop (GA) Eshoo
Bishop (NY) Etheridge
Blumenauer Farr
Boren Filner
Boswell Ford
Boucher Frank (MA)
Boyd Gonzalez
Brady (PA) Gordon
Brown, Corrine Green, Al
Butterfield Green, Gene
Capps Grijalva
Capuano Gutierrez
Cardin Harman
Cardoza Hastings (FL)
Carnahan Herseth
Carson Higgins
Chandler Hinchey
Clever Hinojosa
Clyburn Holden
Conyers Holt
Cooper Honda
Costa Hoolley
Costello Inslee
Cramer Israel
Crowley Jackson (IL)
Cuellar Jackson-Lee
Cummings (TX)
Davis (AL) Jefferson
Davis (CA) Johnson, E. B.
Davis (FL) Jones (OH)
Davis (IL) Kanjorski

Pryce (OH) Putnam
Kirk Radanovich
Ramstad Ramstad
Kolbe Regula
Rehberg Rehberg
Reichert Reichert
Renzi Reynolds
Reynolds Rogers (AL)
Rogers (AL) Rogers (KY)
Rogers (KY) Rogers (MI)
Rogers (MI) Rohrabacher
Rohrabacher Ros-Lehtinen
Ros-Lehtinen Lucas
Royce Ryan (WI)
Ryan (WI) Ryan (KS)
Ryuan (KS) Saxton
Schmidt Schmidt
Schwarz (MI) Schwarzenegger
Sensenbrenner Sessions
Shadegg Shadegg
Shaw Shaw
Sherwood Sherwood
Shimkus Shimkus
Shuster Shuster
Simmons Simmons
Simpson Simpson
Smith (NJ) Smith (NJ)
Smith (TX) Smith (TX)
Sodrel Sodrel
Souder Souder
Stearns Stearns
Sullivan Sullivan
Sweeney Sweeney
Tancredo Tancredo
Taylor (NC) Taylor (NC)
Terry Terry
Thomas Thomas
Thornberry Thornberry
Tiahrt Tiahrt
Tiberi Tiberi
Turner Turner
Upton Upton
Walden (OR) Walden (OR)
Walsh Walsh
Weldon (FL) Weldon (FL)
Weldon (PA) Weldon (PA)
Weller Weller
Westmoreland Westmoreland
Poe Whitfield
Wicker Wicker
Wilson (NM) Wilson (NM)
Young (FL) Young (FL)

Kaptur Kaptur
Kennedy (RI) Kennedy (RI)
Kildee Kildee
Kilpatrick (MI) Kilpatrick (MI)
Kind Kind
Kucinich Kucinich
Langevin Langevin
Lantos Lantos
Larsen (WA) Larsen (WA)
Larson (CT) Larson (CT)
Lee Lee
Levin Levin
Lipinski Lipinski
Lofgren, Zoe Lofgren, Zoe
Lowey Lowey
Lynch Lynch
Markey Markey
Matheson Matheson
Matsui Matsui
McCarthy McCarthy
McCullum (MN) McCollum (MN)
McDermott McDermott
McGovern McGovern
McIntyre McIntyre
McNulty McNulty
Meek (FL) Meek (FL)
Meeks (NY) Meeks (NY)
Michaud Michaud
Millender- Millender-
McDonald McDonald
Miller (NC) Miller (NC)
Miller, George Miller, George
Mollohan Mollohan
Moore (KS) Moore (KS)
Moore (WI) Moore (WI)
Moore (VA) Moore (VA)
Murtha Murtha
Nadler Nadler
Napolitano Napolitano
Neal (MA) Neal (MA)
Oberstar Oberstar
Obey Obey
Oliver Oliver

Ortiz Sanchez, Linda
Owens T.
Pallone Sanchez, Loretta
Pascrell Sanders
Pastor Schakowsky
Payne Schiff
Pelosi Schwartz (PA)
Peterson (MN) Scott (GA)
Pomeroy Scott (VA)
Rogers (NC) Serrano
Rahall Shays
Rangel Sherman
Reyes Skelton
Ross Slaughter
Rothman Smith (WA)
Royce Snyder
Roybal-Allard Solis
Ruppersberger Solis
Rush Spratt
Ryan (OH) Stark
Sabo Stupak
Salazar Tanner

NOT VOTING—25

Brown (OH) Hoyer
Burgess Lewis (GA)
Burton (IN) Maloney
Case McKeon
Castle McKinney
Clay Meehan
Cubin Ney
Evans Paul
Fattah Strickland

□ 1050

Ms. SCHWARTZ of Pennsylvania and Mr. RANGEL changed their vote from ‘‘yea’’ to ‘‘nay.’’

So the previous question was ordered. The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. TERRY). The question is on the resolution.

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

Ms. SLAUGHTER. Mr. Speaker, 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 218, nays 188, not voting 26, as follows:

[Roll No. 505]
YEAS—218

Aderholt Coble
Akin Cole (OK)
Alexander Conaway
Bachus Crenshaw
Baker Culberson
Barrett (SC) Davis (KY)
Barrow Davis, Jo Ann
Bartlett (MD) Davis, Tom
Barton (TX) Deal (GA)
Bass Dent
Beauprez Diaz-Balart, L.
Biggart Diaz-Balart, M.
Bilbray Doolittle
Bilirakis Drake
Bishop (UT) Dreier
Blackburn Duncan
Blunt Emerson
Boehlert English (PA)
Boehner Everett
Bonilla Issa
Bonner Ferguson
Bono Fitzpatrick (PA)
Boozman Flake
Boustany Foley
Bradley (NH) Forbes
Brady (TX) Fortenberry
Brown (SC) Fossella
Brown-Waite, Foxx
Ginny Franks (AZ)
Buyer Frelinghuysen
Calvert Gallegly
Camp (MI) Garrett (NJ)
Campbell (CA) Gerlach
Cannon Gibbons
Cantor Gilchrest
Capito Gillmor
Carter Gingrey
Chabot Goode
Chocola Goodlatte

Tauscher Latham
Taylor (MS) LaTourette
Thompson (CA) Lewis (CA)
Tierney Lewis (KY)
Towns Linder
Udall (NM) LoBiondo
Van Hollen Lucas
Velazquez Lungren, Daniel
Visclosky E.
Wasserman Mack
Schultz Manzullo
Watson Marchant
Watt Marshall
Waxman McCaul (TX)
Weiner McCotter
Wexler McCrery
Woolsey McHenry
Wu McHugh
Wynn McMorris
Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Otter

NAYS—188

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Chandler
Clever
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Edwards
Emanuel
Engel
Eshoo
Etheridge
Farr
Filner
Ford
Frank (MA)
Gohmert

Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Salazar
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions

Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Oliver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda
T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Markey
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Tierney
Towns
Udall (NM)
Van Hollen
Velazquez
Visclosky

Wasserman	Waxman	Wu
Schultz	Weiner	Wynn
Watson	Wexler	
Watt	Woolsey	

NOT VOTING—26

Brown (OH)	Evans	Strickland
Burgess	Fattah	Thompson (MS)
Burton (IN)	Hoyer	Udall (CO)
Case	Lewis (GA)	Wamp
Castle	McKeon	Waters
Clay	McKinney	Wilson (SC)
Cubin	Meehan	Wolf
Doyle	Ney	Young (AK)
Ehlers	Paul	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

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

□ 1100

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 for:

Mr. EHLERS. Mr. Speaker, on rollcall No. 505 I could not vote because the First Lady, Mrs. Laura Bush, and I were dedicating the new National Garden at the Botanic Gardens, and I was not able to return to the House Chamber in time to register my vote. Had I been present, I would have voted "yea."

PERSONAL EXPLANATION

Mr. WOLF. Mr. Speaker, on rollcall Nos. 504 and 505 I am not recorded because I was absent due to my attendance at former congressman Joel T. Broyhill's funeral. Had I been present, I would have voted "yea."

PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 2006

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 1054, I call up the bill (H.R. 4772) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, 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 1054, the amendment in the nature of a substitute printed in the bill is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 4772

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 "Private Property Rights Implementation Act of 2006".

SEC. 2. JURISDICTION IN CIVIL RIGHTS CASES CONCERNING REAL PROPERTY.

Section 1343 of title 28, United States Code, is amended by adding at the end the following:

"(c) Whenever a district court exercises jurisdiction under subsection (a) in an action in

which the operative facts concern the uses of real property, it shall not abstain from exercising or relinquish its jurisdiction to a State court if the party seeking redress does not allege a violation of a State law, right, or privilege, and no parallel proceeding is pending in State court, at the time the action is filed in the district court, that arises out of the same operative facts as the district court proceeding.

"(d) In an action in which the operative facts concern the uses of real property, the district court shall exercise jurisdiction under subsection (a) even if the party seeking redress does not pursue judicial remedies provided by a State or territory of the United States.

"(e) If the district court has jurisdiction over an action under subsection (a) in which the operative facts concern the uses of real property and which cannot be decided without resolution of an unsettled question of State law, the district court may certify the question of State law to the highest appellate court of that State. After the State appellate court resolves the question so certified, the district court shall proceed with resolving the merits. The district court shall not certify a question of State law under this subsection unless the question of State law—

"(1) is necessary to resolve the merits of the Federal claim of the injured party; and

"(2) is patently unclear.

"(f)(1) Any claim or action brought under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) to redress the deprivation of a property right or privilege secured by the Constitution shall be ripe for adjudication by the district courts upon a final decision rendered by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, which causes actual and concrete injury to the party seeking redress.

"(2) For purposes of this subsection, a final decision exists if—

"(A) any person acting under color of any statute, ordinance, regulation, custom, or usage, of any State or territory of the United States, makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

"(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable statute, ordinance, regulation, custom, or usage provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile."

SEC. 3. UNITED STATES AS DEFENDANT.

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

"(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, which causes actual and concrete injury to the party seeking redress.

"(2) For purposes of this subsection, a final decision exists if—

"(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

"(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applica-

ble law of the United States provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile."

SEC. 4. JURISDICTION OF COURT OF FEDERAL CLAIMS.

Section 1491(a) of title 28, United States Code, is amended by adding at the end the following:

"(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

"(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken, without regard to any uses that may be permitted elsewhere; and

"(B) one meaningful application to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one waiver and one appeal, if the applicable statute, ordinance, regulation, custom, or usage provides a mechanism for waiver by or appeal to an administrative agency.

The party seeking redress shall not be required to apply for a waiver or appeal described in subparagraph (B) if such waiver or appeal is unavailable or can not provide the relief requested, or if pursuit of such a mechanism would otherwise be futile."

SEC. 5. CLARIFICATION FOR CERTAIN CONSTITUTIONAL PROPERTY RIGHTS CLAIMS.

Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended by adding at the end the following: "If the party injured seeks to redress the deprivation of a property right or privilege under this section that is secured by the Constitution by asserting a claim that concerns—

"(1) an approval to develop real property that is subject to conditions or exactions, then the person acting under color of State law is liable if any such condition or exaction, whether legislative or adjudicatory in nature, including but not limited to the payment of a monetary fee or a dedication of real property from the injured party, is unconstitutional;

"(2) a subdivision of real property pursuant to any statute, ordinance, regulation, custom, or usage of any State or territory, or the District of Columbia, then such a claim shall be decided with reference to each subdivided lot, regardless of ownership, if such a lot is taxed, or is otherwise treated and recognized, as an individual property unit by the State, territory, or the District of Columbia; or

"(3) alleged deprivation of substantive due process, then the action of the person acting under color of State law shall be judged as to whether it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

For purposes of the preceding sentence, 'State law' includes any law of the District of Columbia or of any territory of the United States."

SEC. 6. CLARIFICATION FOR CERTAIN CONSTITUTIONAL PROPERTY RIGHTS CLAIMS AGAINST THE UNITED STATES.

(a) DISTRICT COURT JURISDICTION.—Section 1346 of title 28, United States Code, is amended by adding at the end the following:

"(i) If a claim brought under subsection (a) is founded upon a property right or privilege secured by the Constitution that concerns—

"(1) an approval from an executive agency to permit or authorize uses of real property that is