

American College of Obstetricians and Gynecologists, the American Academy of Physician Assistants, the American Public Health Association, and the National Association of Nurse Practitioners.

This bill is one last attempt in this Congress to use the emotional, complicated subject of abortion as a cloak for what the sponsors of this bill consistently do: manipulate medical practice and scientific research to conform to their own beliefs and moral agenda.

And when science doesn't support their rhetoric, instead of opening their minds and acting from a place of compassion, they attack physicians who disagree with them, demonize women and families who make the decision about abortion, and deny evidence-based medicine.

It is just this kind of extreme interference in Americans' lives and their medical care that voters around the nation rejected—decisively—on Election Day.

Americans look to us to examine issues thoroughly and with great care, befitting the high honor it is to serve in this body. Passing this bill won't do a single thing to advance the cause we should all share: to create a country, a society and a culture where every pregnancy is intended and every child is wanted, prepared for and cherished.

Congress has no right to legislate how doctors care for their patients, to substitute ideology for scientific evidence, or to penalize physicians for legal and responsible patient care.

I urge my colleagues to reject this bill and this approach to an issue that's difficult for many of us. There is another way and, I would suggest, a better way to help the families of this country have healthy pregnancies and strong families.

THE INTRODUCTION OF COMPROMISE LEGISLATION TO FULLY IMPLEMENT THE LEGAL OBLIGATIONS OF THE UNITED STATES OF AMERICA UNDER THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS, POPs, THE ROTTERDAM CONVENTION ON PRIOR INFORMED CONSENT, PIC, AND THE AARHUS POPs PROTOCOL TO THE GENEVA CONVENTION ON LONG RANGE TRANSBOUNDARY AIR POLLUTION, LRTAP

**HON. PAUL E. GILLMOR**

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. GILLMOR. Mr. Speaker, I am glad to join Chairman BARTON and Chairman BOEHLERT in introducing H.R. \_\_\_\_\_, compromise, consensus legislation to fully implement the legal obligations of the United States of America under the Stockholm, or POPs, Convention; the Rotterdam, or PIC, Convention; and the Aarhus POPs Protocol to the Geneva LRTAP Convention. This is solid public policy that I urge my colleagues to support because it reasonably implements the POPs and PIC Conventions and the LRTAP Protocol.

Over the past 4 years, and even as recently as a few months ago, I have heard people ask

many questions about this bill. Why is it necessary for this legislation to become law? If the United States is already attending these meetings, isn't that enough—why do we need to move on this bill? What does being a full partner mean to these agreements and what does it give the United States Government and its people in terms of rights and opportunities that we do not already have? These are all good questions, but persistent repetition of these inquiries shows a fatal misunderstanding of these agreements and exactly why it is in the interest of the United States to become a party with "full" rights under these accords.

At a minimum, the failure of Congress to pass implementing legislation—thus securing Senate ratification of these treaties—leaves the United States Government in the position of defending its interests and sharing its expertise only when other countries welcome it, not when we wish and need, for our own national purposes, to offer it. The U.S. Environmental Protection Agency has testified before the House Energy and Commerce Subcommittee on Environment and Hazardous Materials that it has been forced to wait long periods of time to be recognized because the leaders of the treaty-related meetings did not consider our delegation important enough to be recognized sooner. This situation presents a radical departure from the leadership role our country took in building the consensus for these pacts to exist. Our delegations should not be welcomed at the receptions for these international meetings, but barred from being integral players in the technological discussions and final decision-making processes in these treaties. Failure to support this legislation is a clear signal that Congress misunderstands the sophistication of our nation's chemical knowledge base and regulatory experience and instead wishes the United States to cede its traditional leadership role in international toxic chemicals management.

Mr. Speaker, in 2001 the Bush administration pledged the commitment of the United States of America to join the Stockholm Convention on Persistent Organic Pollutants. That date marked the culmination of 10 years of bipartisan cooperation and leadership concerning global protection of the environment and public health. These efforts included not just POPs, but the Aarhus Protocol on Long Range Transboundary Air Pollution, LRTAP, of POPs, and the Rotterdam Convention on Prior Informed Consent, PIC. These were not the triumphs of Republican or Democrat White Houses, they were the victories premised on the various needs and hopes of all Americans. Sadly, the benefits of these agreements have not been actualized because of the policy and political agendas of the interested stakeholders as they relate to chemical management. It is unacceptable that those private parties that are subsets of the interests in our country, whether they are businesses or non-profits, have as much, if not more, input than our own Government officials at these meetings. We must put these matters behind us and focus solely on making the U.S. a full partner.

Before I go into the specifics of this legislation and address some of its broader themes, I want to briefly further explain why this legislation is being introduced and why it is different from my bill, H.R. 4591, which also would totally implement and make the United States a full partner in these agreements.

First, this bill is being introduced as a consensus position of the majority of stakeholders who have testified before the House Energy and Commerce Subcommittee on Environment and Hazardous Materials that they want the United States to pass implementing legislation. Second, this legislation is different from H.R. 4591, as introduced, because it represents a good-faith compromise among Members of Congress who actively sought to sit down with me and work out mutually acceptable provisions. I have always been willing to work with any Member of Congress on compromise provisions despite the fact that some Members' delay in getting back to me on whether they wanted to work out a compromise made enactment of this legislation nearly impossible. Finally, this legislation is a collaborative work of elected officials with input from others. Some people think that this kind of legislation needs to be delegated to interest groups to forge. Not only am I dubious about punting our constitutional responsibility to legislate to unelected persons, but history has shown that the same people who have called for a consensus stakeholder process have twice killed the resulting bills.

Regarding the specifics of this bill:

First, this bill is a targeted legislative fix that fills the existing legal gaps and only does what is important for us to become a full partner in these agreements. It does not repeal any part of Federal environmental law, but rather adds a new section to the Toxic Substances Control Act to ban the manufacture, processing, distribution in commerce, use, and disposal of agreed upon POPs and LRTAP POPs chemical substances and mixtures. This new section also grants separate, new authority for the United States to enact new regulations for future additions of POPs chemical substances or mixtures to the Stockholm Convention or LRTAP POPs Protocol. Because there has been concern from a number of persons about the difficulty existing TSCA provisions present in the way of regulating existing chemicals, this bill creates a distinct and different process within TSCA that couples similarly rigorous and sound scientific analyses, but with a more deferential regulatory standard and the elimination of procedural hurdles that many argue have hindered EPA from taking action regarding chemical protection. This is not the TSCA overhaul that many critics of the chemical manufacturing world have wanted, but it is a solid middle ground that relies on science rather than emotion to address these very insidious chemicals, while also keeping these treaties out of governing American manufacturing processes and decisions.

In addition, while many political opponents of past POPs legislative efforts have argued that the language in this legislation makes regulation of POPs more difficult and places profits of chemical companies over the protection of human health, a reading of the plain language of this legislation would prove how wrong and intentionally inflammatory they are to insist on this interpretation. Specifically, this legislation sets its regulatory standard at "protecting human health and the environment" and intends that while exercising this legal authority, the EPA Administrator, in choosing the means to provide that protection, is to balance costs and benefits. In other words, costs and benefits are to be taken into consideration in determining how to regulate a substance, not whether to regulate a substance.

Lastly, on this point, and to further buttress the point that this bill is a deliberately different way of handling chemicals than the way they are now treated under existing Federal environmental law, the sponsors of this bill and I recognize that implementation legislation for these international agreements is a distinct context in which to amend U.S. law. Recognizing that the underlying statutes being amended address the very broad and powerful reach of the Federal Government into U.S. manufacturing, this legislation is solely intended to allow the United States to be able to participate fully in these agreements to the extent that it wishes. The sponsors and I do not intend for the regulatory standards outlined in this bill, whether singularly or as a package, to be a blanket precedent for other environmental legislation. Future Congresses should be very careful in assessing the environmental, public health, and other social and economic needs of the country before copying this standard because of the unique circumstances and purposes to which this legislation is tied.

Second, consistent with the structures and rules of the POPs Convention, this legislation, places U.S. officials, laws, and standards—not those of an unelected and unaccountable international body—in charge of determining what specific control measures the United States should take. Treaties—just like allies—change and it is hard to predict their future. As the newly elected vice president of the NATO Parliamentary Assembly, I see countries use environmental and safety laws as non-tariff trade barriers. In fact, we need not look any further than the World Trade Organization case involving Genetically Modified Organisms, or GMO, crops for an example of how the European Union tried to use its laws to bar market access for our farmers. I believe it is reasonable to suggest that in the same way that environmental and labor groups argued that added environment and labor considerations must not be divorced from trade agreements, such as NAFTA and GATT, you also cannot ignore that economic and labor issues need to play a role when countries enact environmental laws.

A minority of stakeholders in this country are unhappy with the chemicals policy of the present administration and support using a legal standard in this country that flows straight from these treaties and has the control measures also directed by the international treaty parties, not the United States. This type of effort not only removes the executive branch from involvement—the State Department has testified in opposition to this type of regime—but also the legislative branch from the process of considering the impact on U.S. interests and laws. Ultimately, in this construct, the judicial branch becomes the sole arbiter of rights and interpreter of obligations under these agreements—a place the framers of the U.S. Constitution never intended. In addition, these same persons want to use a judicial review standard that merely ratifies rather than questions the regulatory decisions of the executive branch. This circular argument on their part not only diminishes judicial review—which their proposals pose as the supreme avenue to set and resolve policy—but further reinforces a desire to have U.S. environmental and manufacturing policy set in foreign capitals. The legislation I am introducing today rightfully recognizes that these agreements will

be law long after the current president is out of office and Congress should not and cannot pass reactionary legislation simply to hem in one leader. It is our obligation to pass the best legislation that will serve our country and its interests under every leader; this bill does that.

Third, the public should be fully informed about actions being taken under these agreements and Congress should be informed when conflicts with existing environmental statutes occur. Neither the public nor Congress should be prevented from providing input to our Government about structures that are going to affect our lives simply because it is inconvenient. History will show that cooperation between parties has allowed our treaties to function more successfully than when either Congress or the public is cut out. This contains public notice and comment throughout the entire treaty process, including the regulation of chemicals as part of our country's desire to "opt-in."

Fourth, this legislation preserves the existing public petition process under the Administrative Procedure Act and provides certainty to all Americans as to what rights and obligations they would have. We must not forget that we have both a mature chemical industry and a well-established set of legal rights and responsibilities that are the envy of most countries. This bill draws on—not adds to—the well-founded petition processes in all environmental laws and maintains—unamended—the current Federal-State dynamic in all environmental laws. Most importantly, nothing in this bill affects any other environmental statute, or State delegated programs under those other statutes, or any other environmental board constituted outside of TSCA.

Fifth, sound, objective, peer-reviewed science should be at the core of any decisions made by the United States under these treaties. I believe we need to focus our finite resources on the most pressing problems, not disproportionately or fully on every problem we face without regard to context. Currently, an assessment of "risks and effects" is called for in other environmental statutes and is not unprecedented.

In addition, the legislation being introduced today amends a provision contained in section 2 of H.R. 4591 that created a new TSCA section 503(e)(4) that relied on a determination by the EPA Administrator of the "weight of the evidence" when making a regulatory determination regarding restrictions on newly added POPs chemicals. It requires the EPA Administrator to use sound and objective scientific practices, the best available science, and to describe in the rulemaking record the quality of the scientific information on which the Administrator based a decision to take action against a POPs or LRATP POPs chemical substance or mixture.

Sixth, this legislation alters no existing rights and responsibilities of the States under Federal chemicals laws. First, every right, obligation, and opportunity of the States that exists under TSCA are still available to the States. Some, including several Democrat State attorneys general who were up for reelection, have argued that States would be precluded from legislating or litigating around the Federal Government in a way that they can do now. Nothing could be further from the truth. Second, even if one were to accept the argument that States should be able to act any way they

want, we should not forget that this is a treaty and that States should not unwittingly put the United States out of compliance with its obligations under these agreements through their own enactments and the State Department has written to me that we should not allow that to happen. Finally, to clarify concerns raised about potential pre-emption possibilities in the face of long-standing State Department practice—that the United States not agree to new treaty obligations unless our country has the legal authorities in place to comply with those obligations, section 6(e) of this legislation provides that any Federal pre-emption of State laws cannot occur unless a rule or order implementing our obligation has been issued under this act and has gone final or become effective. Concurrently, section 2 of this bill requires, in new TSCA section 506, that no regulation issued under this authority can become effective unless the United States consents to be bound to a treaty obligation regarding that chemical substance or mixture.

Seventh, and finally, while this legislation is careful to ensure that only U.S. officials are the drivers of decisions affecting our Nation and its citizens—a feature expressly guaranteed by these treaties—I also want to point out that this legislation also recognizes the global nature of this treaty and the important contributions that other countries may make to inform our decisions. Section 2 of this legislation establishes a new TSCA section 503(e)(2)(B) that allows the EPA Administrator to use internationally generated information or scientific studies, so long as they meet the scientific soundness and objectivity criteria in this legislation, in assessing the statutory considerations regarding the domestic regulation of a new POPs or LRTAP POPs chemical substance or mixture.

Furthermore, new TSCA section 503(e)(2)(v) of section 2, requires domestic consideration of "national and international consequences that are likely to arise as a result of domestic regulatory action (including the possible consequences of using alternative products or processes)." In doing so, this provision's use of the word "consequences" is not meant to automatically imply negative connotations, but rather that the EPA Administrator is to look at the national and international positive and negative benefits that would flow from domestic regulatory action. That being said, the inclusion of this provision is in no way meant to give new legal rights or standing to foreign-based entities in U.S. courts regarding U.S. domestic regulatory actions under this legislation or the international environmental accords that this legislation implements.

Mr. Speaker, this legislation is a true compromise that represents the middle ground on treaty implementation legislation and a place where most Americans believe our policy should be. If the United States is to remain a leader in the global environmental debate it must have legislation that fully implements these treaties. The time has come for us to make a difference in global environmental protection from the most toxic of chemical substances and mixtures. I urge Congress to pass this legislation as soon as is practicable and make a strong statement of our national resolve to tackle these matters rather than place mere words behind our commitments.

THE INTRODUCTION OF COMPROMISE LEGISLATION TO FULLY IMPLEMENT THE LEGAL OBLIGATIONS OF THE UNITED STATES OF AMERICA UNDER THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS, POPS, THE ROTTERDAM CONVENTION ON PRIOR INFORMED CONSENT, PIC, AND THE AARHUS POPS PROTOCOL TO THE GENEVA CONVENTION ON LONG RANGE TRANSBOUNDARY AIR POLLUTION, LRTAP

**HON. SHERWOOD BOEHLERT**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. BOEHLERT. Mr. Speaker, I am pleased to join Mr. BARTON and Mr. GILLMOR in introducing this compromise version of treaty implementation legislation, which reflects many long hours of serious negotiation between our staffs.

I entered into those negotiations because I believe it is important for the U.S. to be a party to these important treaties to help protect the global environment. This is a view shared by both the environmental community and the chemical industry. The U.S. ought to maintain its traditional leadership role in this area, first, to protect our own national interests and to protect our citizens from hazardous pollutants that circulate globally, but also to improve health and the environment around the world.

The bill we are introducing today is a genuine compromise. It's not what I would write if I were drafting a bill alone, and it reflects movement by Mr. BARTON and Mr. GILLMOR away from their original vehicle, H.R. 4591. No doubt further improvements could be made to it, but it should serve as a marker to show the way in the next Congress. This bill should demonstrate that it is possible to write worthy implementation language without opening the "can of worms" involved in rewriting all of the Toxic Substances Control Act, TSCA. But the regulatory mechanisms created by this bill should not be seen as a precedent for other environmental statutes.

Let me make one more general point before getting into the interpretation of specific sections: I am cosponsoring this bill because I believe it will enable and facilitate the regulation of pollutants, not stymie that regulation. Quite properly under this bill, the U.S. cannot be forced to regulate a chemical by any international body. But the bill should pave the way for the U.S. to regulate additional dangerous pollutants. If the processes set out in this bill are used primarily as barriers to regulation, then that will mean that the bill is being misinterpreted or abused. The bill does require thoughtful and thorough analysis, but that is not intended to prevent any regulation from moving forward.

With that general precept in mind, let me focus on the important language in the new section 503(e)(1) of TSCA. The language calls for regulation "to the extent necessary to protect human health and the environment in a manner that achieves a reasonable balance of social, environmental, and economic costs and benefits." There are two distinct ideas and

processes encapsulated in that language. First, the Environmental Protection Agency, EPA, is to determine whether a substance needs to be regulated "to protect human health and the environment." Then, separately, it needs to determine precisely how to regulate that substance—i.e., the "manner" of regulation—taking into account "social, environmental and economic costs and benefits." I want to say this directly here to clarify language that was intended to make the same point in the Committee report that was filed on H.R. 4591.

The sponsors also want to make clear that the consideration described in the new section 503(e)(2)(A)(v) of TSCA is meant to direct EPA to consider, among other things, both the domestic and international benefits that would flow from U.S. regulation of a substance.

Now let me turn to two important differences between this bill and H.R. 4591. First, we have entirely rewritten the new section 503(e)(4) of TSCA to clarify its intent, to drop the controversial and contested notion of "weight of the evidence," and to remove any implication that that paragraph was creating a new legal or scientific standard of review. Language in the committee report on paragraph (4) does not apply to this bill.

The paragraph (4) in this bill is designed primarily to ensure transparency by requiring EPA to describe the information that was used in its decision-making and the quality of the information on which the agency based its decision.

Second, this bill clarifies when State preemption occurs. Section 6(e) now makes clear that no State preemption occurs unless and until a regulation that has been promulgated under the new section 503 of TSCA has gone into effect. No action short of that and no action under any statute other than TSCA can trigger preemption under this bill.

I greatly appreciate the openness the Energy and Commerce Committee has demonstrated during the negotiations on this bill and the courtesy they have extended to me and my staff. I hope this bill paves the way to U.S. full participation in the important treaties covered by this bill.

THE INTRODUCTION OF CONSENSUS LEGISLATION TO IMPLEMENT THE LEGAL OBLIGATIONS OF THE UNITED STATES OF AMERICA UNDER THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (POPS), THE ROTTERDAM CONVENTION ON PRIOR INFORMED CONSENT (PIC), AND THE AARHUS POPS PROTOCOL TO THE GENEVA CONVENTION ON LONG RANGE TRANSBOUNDARY AIR POLLUTION (LRTAP)

**HON. JOE BARTON**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 8, 2006*

Mr. BARTON of Texas. Mr. Speaker, I am glad to join Chairman GILLMOR and Chairman BOEHLERT in introducing H.R. \_\_\_\_\_, consensus legislation to implement the legal obligations of the United States of America under the Stockholm, or POPS, Convention; the Rot-

terdam, or PIC, Convention; and the Aarhus POPs Protocol to the Geneva LRTAP Convention.

This legislation represents an enormous effort that started in the Energy and Commerce Committee over 2 years ago to bring the United States into compliance with 3 multilateral chemical agreements that have already gone into effect. It is vitally important that the United States be full-fledged participants at these Conventions and this legislation, along with ratification by the Senate, enables us to be a full and active party. More importantly, it allows our country to contribute its vast database of knowledge on chemical substances and mixtures as new chemicals are added to these agreements. Without implementing legislation, the United States government participates at a level akin to that of an NGO: permitted as "outside lobbyists," but not permitted to vote on important decisions where our expertise and scientific knowledge will be critical.

How is this bill different from H.R. 4591, the bill that was reported favorably by the Energy and Commerce Committee on Wednesday, July 12, 2006? While both bills give full, legal consideration to costs and benefits through a strong and transparent rulemaking procedure characterized by rigorous scientific analysis, the consensus bill eliminates the requirement to utilize a "weight of the evidence" approach in assessing risks and effects.

This bill also clarifies concerns raised about potential state preemption possibilities. In accord with long-standing U.S. practice to not agree to new treaty obligations unless our country has the legal authorities in place to comply with those obligations, section 6(e) of this legislation provides that any Federal preemption of state laws cannot occur unless a rule or order implementing our obligation has been issued under this Act and has gone final or become effective. Additionally, section 2 of this bill provides that no regulation issued under this authority may become effective unless the United States consents to be bound to a treaty obligation regarding that chemical substance or mixture. This modification will end the misguided criticism of H.R. 4591 on preemption issues, while preserving and codifying State Department practice.

Mr. Speaker, this legislation does not represent an overhaul to the Toxic Substances Control Act, which could take years to debate. Instead it represents a broad consensus to enact the limited legislative fixes to bring the United States into full compliance with its obligations under these agreements, and authorizes discretion to the Environmental Protection Agency to regulate additional chemicals that combines a deferential regulatory standard with rigorous and practical sound scientific analysis. As decisions are currently being made that affect American interests, the legislation represents the responsible thing to do and I would urge our colleagues in both bodies to pass it as soon as practicable.

Mr. Speaker, on a personal note it's my pleasure to offer our colleague from New York, Mr. BOEHLERT, my best wishes as he leaves this body to pursue new endeavors. His collaboration on this bill, and others, has had a real impact.