

November 3, 1999

ANTITRUST TECHNICAL
CORRECTIONS ACT OF 1999

SPEECH OF

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 2, 1999

Mr. HYDE. Mr. Speaker, I rise in support of H.R. 1801, the Antitrust Technical Corrections Act of 1999, which I have introduced with Ranking Member CONYERS. H.R. 1801 makes four separate technical corrections to our antitrust laws. Three of these corrections repeal outdated provisions of the law: the requirement that depositions in antitrust cases brought by the government be taken in public; the prohibition on violators of the antitrust laws passing through the Panama Canal; and a redundant and rarely used jurisdiction and venue provision. The last one clarifies a long existing ambiguity regarding the application of Section 2 of the Sherman Act to the District of Columbia and the territories.

The Committee has informally consulted the antitrust enforcement agencies, the antitrust Division of the Department of Justice and the Bureau of Competition of the Federal Trade Commission, and the agencies have indicated that they do not object to any of these changes. In response to written questions following the Committee's November 5, 1997 oversight hearing on the antitrust enforcement agencies, the Department of Justice recommended two of the repeals and the clarification contained in this bill. The other repeal was recommended to the Committee by the House Legislative Counsel. In addition, the Antitrust Section of the American Bar Association supports the bill, and I ask unanimous consent to insert their comments in the RECORD.

First, H.R. 1801 repeals the Act of March 3, 1913. That act requires that all depositions taken in Sherman Act equity cases brought by the government be conducted in public. In the early days, the courts conducted such cases by deposition without any formal trial proceeding. Thus, Congress required that the depositions be open as a trial would be. Under the modern practice of broad discovery, depositions are generally taken in private and then made public if they are used at trial. Under our system, this act causes three problems: (1) it sets up a special rule for a narrow class of cases when the justification for that rule has disappeared; (2) it makes it hard for a court to protect proprietary information that may be at issue in an antitrust case; and (3) it can create a circus atmosphere in the deposition of a high profile figure. In a recent decision, the D.C. Circuit invited Congress to repeal this law.

Second, H.R. 1801 repeals the antitrust provision in the Panama Canal Act. Section 11 of the Panama Canal Act provides that no vessel owned by someone who is violating the antitrust laws may pass through the Panama Canal. The Committee has not been able to determine why this provision was added to the Act or whether it has ever been used. However, with the return of the Canal to Panamanian sovereignty at the end of 1999, it is appropriate to repeal this outdated provision. The

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Committee has consulted informally with the House Committee on Armed Services, which has jurisdiction over the Panama Canal Act. Chairman SPENCE has indicated that the Committee has no objection to this repeal, and the Committee has waived its secondary referral. I thank Chairman SPENCE for his cooperation.

Third, H.R. 1801 clarifies that Section 2 of the Sherman Act applies to the District and the territories. Two of the primary provisions of antitrust law are Section 1 and Section 2 of the Sherman Act. Section 1 prohibits conspiracies in restraint of trade, and Section 2 prohibits monopolization, attempts to monopolize, and conspiracies to monopolize. Section 3 of the Sherman Act was intended to apply these provisions to the District of Columbia and the various territories of the United States. Unfortunately, however, ambiguous drafting in Section 3 leaves it unclear whether Section 2 applies to those areas. The Committee is aware of at least one instance in which the Department of Justice declined to bring an otherwise meritorious Section 2 claim in a Virgin Island case because of this ambiguity. This bill clarifies that both Section 1 and Section 2 apply to the District and the Territories. All of the congressional representatives of the District and the Territories are cosponsors of the bill.

Finally, H.R. 1801 repeals a redundant antitrust jurisdictional provision in Section 77 of the Wilson Tariff Act. In 1955, Congress modernized the jurisdictional and venue provisions relating to antitrust suits by amending Section 4 of the Clayton Act. At that time, it repealed the redundant jurisdictional provision in Section 7 of the Sherman Act, but not the one contained in Section 77 of the Wilson Tariff Act. It appears that this was an oversight because Section 77 was never codified and has rarely been used. Repealing Section 77 will not diminish any jurisdictional or venue rights because Section 4 of the Clayton Act provides any potential plaintiff with the same jurisdiction and venue rights that Section 77 does and it also provides broader rights. Rather, the repeal simply rids the law of a confusing, redundant, and little used provision.

Since the Committee on the Judiciary ordered this bill reported, we discovered two drafting errors that we have corrected in the current managers' amendment that is before the House. One change corrects an incorrect reference to the United States Code. Secondly, we discovered that the language describing the scope of commerce covered by the territorial provision did not precisely parallel that in the existing section 3 of the Sherman Act, and we have changed that language so that the new subsection 3(b) will parallel the existing law.

In addition, we realized after reporting the bill that it would be helpful to clarify the effect of these changes on pending cases. Because the public deposition matter does not affect the litigants' substantive rights, we have made that change apply to pending cases. The other three changes could affect the substantive rights of litigants. For that reason, we have not made those changes apply to pending cases, although we believe that it is unlikely that there are any pending cases that are affected.

I believe that all of these provisions are non-controversial, and they will help to clean up some underbrush in the antitrust laws. I rec-

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ommend that the House suspend the rules and pass the bill as amended by the managers' amendment.

VETERANS DAY, 1999—HONORING
THE SERVICE OF VIETNAM AND
VIETNAM-ERA VETERANS

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 3, 1999

Mr. THOMPSON of California. Mr. Speaker, in a little more than a week, we will once again observe Veterans Day—the date a grateful Nation sets aside to honor the men and women who have served our nation as members of its military forces.

It is particularly poignant that we observe this occasion. First designated to commemorate Armistice Day and the restoration of peace, Veterans Day today is the occasion on which we appreciate the accomplishments and the sacrifices of untold scores of individuals. It is a day on which we acknowledge the role these individuals played in writing the history of the United States—a history that, in this century alone, has evolved from isolation to world leadership.

Underscoring its importance and the value of the ceremonies we observe today is the fact that a smaller percentage of Americans have now served in the Armed Forces of the United States that at any time in our recent history. This of course, reflects the unprecedented peace the United States has enjoyed. But, it also reminds us not to be lulled into complacency—into believing that future generations will not be called to arms.

Though we pray in our hearts they won't be called, we know in our heads that one day they may.

Like others before us, my generation was also called to arms. Most of us responded, notwithstanding the controversy and turmoil the war caused. The images of Vietnam are still vivid in our individual and collective memories. But, what's most surprising is the passage of time since the war and the fact that next year will mark the 25th anniversary of the departure of the last U.S. servicemen from Vietnam—a departure that closed the Vietnam-era and, for many of us, closed an important chapter in our lives.

Between 1961 and 1975, more than 2,590,000 Americans served in the Armed Forces in Vietnam. Untold thousands served in support roles elsewhere in Southeast Asia. At the same time, millions more protected U.S. national security interests in the other far regions of the world. And let us not forget the millions of civilians who also contributed to our nation's defense at a time tensions were growing between world superpowers.

Recently, the Commander's Council, the Allied Council, and the Administration and staff at the California Veterans Home in Yountville suggested to me that our nation celebrate this year's Veterans Day by marking the service of those who served in and during the Vietnam-era. On the eve of the 25th anniversary of that war's end, such a tribute is indeed appropriate and, as such, I would like to read the text of