

Company. Unfortunately, little attention has been paid to this important trial brought by the Department of Justice in January 1887 United States v. Bell Telephone Company and Alexander Graham Bell. This lawsuit was instituted by the federal government against Bell to strip him of his patents for fraud and misrepresentation. Appealed on demurrer to the Supreme Court, it was determined by the High Court that a viable and meritorious contention against Bell had been raised, and the case was remanded for trial. The record of the trial proceeding was never printed and now resides in storage with the National Archives and Records Administration.

Interestingly, the hearings before the Interior Secretary coincided with a lawsuit brought by the Bell Company against Mr. Meucci for patent infringement. Sadly, none of proceedings at Interior were made available during the patent infringement trial.

MUNICIPAL GAS SUPPLY ACT OF
2001

HON. MAC COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 24, 2001

Mr. COLLINS. Mr. Speaker, I am introducing legislation today to correct a problem created by the IRS that has interfered with the ability of municipal gas systems to enter into long-term prepaid contracts to obtain natural gas for their citizens. I am joined today by 20 of my colleagues who share my great concern for this issue.

The approximately 1,000 publicly owned gas distribution systems in the United States comprise about 5 percent of the market. They are primarily located in small towns and rural communities. In the last 15 years there have been major changes in the natural gas industry that have increased their exposure to the great uncertainties of the natural gas market. In 1985 the Federal Energy Regulatory Commission "FERC" began deregulating the delivery of natural gas. In 1993 FERC began requiring that pipelines "unbundle" their services to customers. This meant that municipal gas systems could no longer purchase natural gas supplies on a reliable and regulated basis from interstate natural gas pipelines. This fundamental change in the marketplace meant that for the first time municipal gas systems had to acquire reliable gas supplies and transport on their own in a deregulated marketplace. In response, many formed joint action agencies, as contemplated in the FERC restructuring, to acquire and manage the delivery of gas.

In today's natural gas markets, long-term prepaid supply arrangements are the most reliable means for municipal gas systems to obtain an assured supply of natural gas. To fund prepaid supply contracts, the municipality or the joint action agency issues tax-exempt bonds. These contracts contain stiff penalties if the supplier fails to perform making this the most reliable gas supply that municipal gas agencies can purchase. Until August of 1999, joint action agencies entered into prepayment supply contracts with gas suppliers to obtain a long-term (e.g., 10-year) supply of gas.

In August 1999, the IRS published a request for comment that has effectively prevented municipal gas systems from using their tax-exempt borrowing authority to fund the purchase of long-term, prepaid supplies of natural gas for their citizens. The IRS questioned whether the purchase of a commodity, such as natural gas, under a prepaid contract financed by tax-exempt bonds has a principal purpose of earning an investment return, in which case the bonds would run afoul of the arbitrage rules of the Internal Revenue Code. The IRS has not issued any guidance following the August 1999 request for comment.

Under the Internal Revenue Code, tax-exempt bonds may not be used to raise proceeds that are then used to acquire "investment-type property" having a higher yield than the bonds. Governmental bonds that violate this arbitrage restriction do not qualify for tax-exempt status. Treasury regulations provide that investment-type property includes certain prepayments for property or services "if a principal purpose for prepaying is to receive an investment return." But, "a prepayment does not give rise to investment-type property if . . . the prepayment is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment. . . ." A very similar standard is used to determine whether a prepayment transaction is treated as a loan for purposes of the private loan financing test. If a transaction is considered a private loan financing, the bonds are treated as private activity bonds. Although municipal gas systems clearly have a "substantial business purpose" for entering into prepayment transactions and "no commercially reasonable alternative," the failure of the IRS to issue any guidance following its August 1999 request for comment has eliminated the most efficient tool available to public gas systems to secure long term supplies of natural gas.

The IRS has essentially acted against municipal gas systems without going through any of the administrative procedures required for agency action. It has not issued any regulations, ruling or other guidance; it has simply put out a request for comment that has effectively prevented the issuance of any tax-exempt obligations to fund prepaid contracts for natural gas.

The legislation we are introducing today would clarify the law, both with respect to the arbitrage rules and the private loan financing rules, to remove the confusion created by the IRS.

This country is now facing an energy crisis. All across the nation the price of natural gas has been at record levels as purchasers have scrambled to obtain an assured supply. Meanwhile, by requesting comment and then failing to act, the IRS has prevented small communities from using their tax-exempt borrowing authority to obtain a long-term, assured supply of competitively priced natural gas. This problem must be addressed as part of comprehensive energy legislation that Congress will soon consider.

TRIBUTE TO CANDICE A. NEAL OF
EVA, ALABAMA

HON. ROBERT E. (BUD) CRAMER, JR.

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 24, 2001

Mr. CRAMER. Mr. Speaker, I submit into the CONGRESSIONAL RECORD the following essay written by a bright young lady from North Alabama, Miss Candice Neal. The essay titled "The Constitution: A Fantastic Journey" was recently selected as the winner of the 2001 American Legion National High School Oratorical Contest. I would like to submit her patriotic words for the RECORD.

"THE CONSTITUTION: A FANTASTIC JOURNEY"

Attention time travelers this is your final boarding call for flight U.S. 1-7-8-7. Congratulations you have selected one of our more popular destinations, The Beginning of American Government. Today, you will experience some of the more dramatic events in our nation's history. Flight 1-7-8-7 is a non-stop flight, back in time, to the creation of the U.S. Constitution. The flight crew has requested that you remain seated with your personal liberties securely fastened. When the captain is certain that you are not in danger she will illuminate the "ratification light" indicating that you may move about the cabin freely. As we prepare for take-off I will remind you that this is a non-smoking flight, and in keeping with today's destination, federal law prohibits the violation of anyone's inalienable rights.

Please look in the seat back pockets in front of you, to review today's agenda. We begin our journey with a basic knowledge and understanding of the Constitution and how it was created. In the second phase of this adventure, we will learn how to responsibly engage in our constitutional rights. And, finally you will discover what it means to become a part of history, by participating in this government of the people, by the people, and for the people.

We've been cleared for takeoff, so please direct your attention to the windows on the left side of the cabin. You will note instances in recent history, in which rulers and dictators have taken away people's personal freedoms. There's Kosovo, Bosnia and Tianenmen Square.

Make sure your seat belts are securely fastened. We are about to enter a turbulent time in American History—the defense of democracy—There's Desert Storm, now Pearl Harbor and our final stop, the Revolutionary War. This is where our journey begins. . . .

What you might not realize is that the Constitution is actually our third form of government. It was here during the Revolutionary War when our fight for freedom began. The American Colonies were first forced to live under the reign of England. From 1775 until 1783 the American Colonies fought for their independence. Fast forward to 1781. You'll notice that even before the fighting was over, our second form of government, the Articles of Confederation, was adopted. It is obvious to us now, as time travelers, that these young colonies would require much more structure than the Articles of Confederation had to offer. Here we see the lack of a central government to levy taxes and enforce laws. We see states minting their own currency and imposing tariffs on out-of-state goods. We see economic depression and political wandering.