

Cummings, Robert Aderholt, Mary Bono, Lois Capps, Tom Davis, Trent Franks, Michael M. Honda, Peter T. King, Michael R. McNulty, James P. Moran, Joseph R. Pitts, J. Randy Forbes, Mark R. Kennedy, James McGovern, Michael H. Michaud, John W. Oliver, Rick Renzi, Lucille Roybal-Allard, John J.H. Schwarz, Christopher Shays, Rob Simmons, Mark E. Souder, James T. Walsh, Tom Osborne, James F. Sensenbrenner, Jr., John Shimkus, Christopher H. Smith, Edolphus Towns and Zach Wamp, Members of Congress.

INTRODUCTION OF BILL TO PROTECT VICTIMS OF SEXUAL ASSAULT IN THE WORKPLACE

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 9, 2005

Mrs. MALONEY. Mr. Speaker, today I introduce a bill of great public importance to women in the workforce across the United States. The U.S. Justice Department estimated that from 2000 to 2002, the percentage of rapes and sexual assaults occurring at the workplace jumped from 2 percent to 10 percent of the total number of rapes and sexual assaults occurring in the United States yearly. Yet, many of these victims are told their only remedy is workers' compensation. When rape occurs on the job, employers should not be able to hide behind a system designed to compensate for job-related accidents. My bill sends a clear message: Rape is not all in a day's work.

This bill gives victims of workplace violence across the Nation a remedy outside the workers' compensation system. It does this by creating a Federal civil rights cause of action, under certain conditions, for employees who have been the victims of gender-motivated violence at work. This bill will not result in numerous and unwarranted lawsuits against small businesses. In fact, the legislation outlines very strict requirements regarding whether a case would fall under the purview of this bill. Workers' compensation is a great system—it has created an American workplace safe from industrial accidents. But the job isn't done. This bill will encourage employers to create a job environment free of violent sexual assault and rape, because it is a terribly sad day in America when rape is considered all in a day's work.

INTRODUCTION OF BILL TO REAFFIRM STATE AUTHORITY TO REGULATE RESIDENT AND NON-RESIDENT HUNTING AND FISHING

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 9, 2005

Mr. UDALL of Colorado. Mr. Speaker, today I am introducing a bill to reaffirm the authority of each state to regulate hunting and fishing within its boundaries, and especially a state's

authority to enforce laws or regulations that differ in the way they treat that state's residents and people residing elsewhere.

A similar Senate bill has been introduced by Senator REID of Nevada, who introduced a related measure in the 108th Congress. He has been the leader on this matter, and I am proud to join in the effort.

There is nothing new about a state's having different rules for resident and nonresident hunters or anglers. Colorado draws that distinction in several ways, and many other states do so as well.

And while there have been challenges to the validity of such rules, until recently the federal courts have upheld the right of the states to make such distinctions. For example, in 1987 the federal district court for Colorado, in the case of *Terk v. Ruch* (reported at 655 F. Supp. 205), rejected a challenge to Colorado's regulations that allocated to Coloradans 90% of the available permits for hunting bighorn sheep and mountain goats.

But a recent Court of Appeals decision marked a change—something that definitely is new.

In that case (*Conservation Force v. Manning*, 301 F.3d 985; 9th Cir. 2002), the federal appeals court for the 9th Circuit held that Arizona's 10 percent cap on nonresident hunting of bull elk throughout the state and of antlered deer north of the Colorado River had enough of an effect on interstate commerce that it could run afoul of what lawyers and judges call the "dormant commerce clause" of the Constitution.

Having reached that conclusion, the appeals court determined that the Arizona regulation discriminated against interstate commerce—meaning the "dormant commerce clause" did apply and that the regulation was subject to strict scrutiny, and could be upheld only if it served legitimate state purposes and the state could show that those interests could not be adequately served by reasonable non-discriminatory alternatives.

The appeals court went on to find that the regulations did further Arizona's legitimate interests in conserving its population of game and maintaining recreational opportunities for its citizens, but it remanded the case so a lower court could determine whether the state could meet the burden of showing that reasonable non-discriminatory alternatives would not be adequate.

Because of the decision's potential implications for their own laws and regulations, it was a source of concern to many states in addition to Arizona. In fact, 22 other States joined in supporting Arizona's request for the decision to be reviewed by the U.S. Supreme Court.

Colorado was one of those States, and our then-Attorney General, Ken Salazar, joined in signing a brief in support of Arizona's petition for Supreme Court review.

Regrettably, the Supreme Court denied that petition. So, for now, the 9th Circuit's decision stands. Its immediate effect is on states whose federal courts are within that circuit—namely those in Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington as well those of Guam and the Commonwealth of the Northern Marianas. But it could have an effect on the thinking of federal courts across the country.

The bill's purpose is to forestall that outcome, and so far as possible to return to the state of affairs prevailing before the 9th circuit's decision.

The bill would do two things:

First, in Section 2(a), it would declare that the policy of Congress is that it is in the public interest for each state to continue to regulate the taking of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and non-residents.

And, in Section 2(b), it would provide that silence on the part of Congress is not to be construed by the courts as imposing any barrier under the commerce clause of the constitution to a state's regulation of hunting, fishing, or trapping.

These provisions are intended to speak directly to the "dormant commerce clause" basis for the 9th Circuit's decision in *Conservation Force v. Manning*.

I am not a lawyer, but my understanding is that lawyers and judges use that term to refer to the judicially-established doctrine that the commerce clause is not only a "positive" grant of power to Congress, but also a "negative" constraint upon the States in the absence of any Congressional action—in other words, that it restricts the powers of the states to affect interstate commerce in a situation where Congress has been silent.

Section 2(a) of the bill would end the perceived silence of Congress by affirmatively stating that state regulation of fishing and hunting—including State regulation that treats residents and non-residents differently—is in the public interest. This is intended to preclude future application of the "dormant commerce clause" doctrine with regard to such regulations.

Section 2(b) would make it clear that even when Congress might have been silent about the subject, that silence is not to be construed as imposing a commerce-clause barrier to a state's regulation of hunting or fishing within its borders.

This bill is neither a federal mandate for state action nor a Congressional delegation of authority to any state. Instead, it is intended to reaffirm state authority and make clear that the "dormant commerce clause"—that is, Congressional inaction—is not to be construed as an obstacle to state's regulating hunting or fishing, even in ways that some might claim adversely affect interstate commerce by treating residents differently from nonresidents.

It's also important to note that the bill is not intended to affect any federal law already on the books or to limit any authority of any Indian Tribe. Section 3 of the bill is intended to prevent any misunderstanding on these points.

Section 3(1) specifies that the bill will not "limit the applicability or effect of any Federal law related to the protection or management of fish or wildlife or to the regulation of commerce."

Thus, to take just a few examples for purposes of illustration, the bill will not affect implementation of the Endangered Species Act, the Migratory Bird Treaty Act, the Lacey Act, the National Wildlife Refuge Administration Act, or the provisions of the Alaska National Interest Lands Conservation Act dealing with subsistence.

Section 3(2) similarly provides that the bill is not to be read as limiting the authority of the federal government to temporarily or permanently prohibit hunting or fishing on any portion of the federal lands—as has been done with various National Park System units and in some other parts of the federal lands for various reasons, including public safety as well as the protection of fish or wildlife.

And Section 3(3) explicitly provides that the bill will not alter any of the rights of any Indian Tribe.

Mr. Speaker, this bill is narrow in scope but of national importance because it addresses a matter of great concern to hunters, anglers, and wildlife managers in many states. I think it deserves broad support.

For the information of our colleagues, here is a brief outline of the bill and a letter of support from the International Association of Fish and Wildlife Agencies:

OUTLINE OF BILL

Section One provides a short title—“Reaffirmation of State Regulation of Resident and Nonresident Hunting and Fishing Act of 2005.”

Section Two has two subsections:

Subsection 2(a) states that it is the policy of Congress that it is in the public interest for each state to continue to regulate the taking of fish and wildlife for any purpose within its boundaries, including by means of laws or regulations that differentiate between residents and non-residents with respect to the availability of licenses or permits for particular species, the kind and numbers of fish or wildlife that may be taken, or the fees charged in connection with issuance of hunting or fishing licenses or permits.

Subsection 2(b) states that silence on the part of Congress is not to be construed to impose any barrier under the commerce clause of the Constitution to a state’s regulation of hunting or fishing.

Section Three specifies that the bill is not to be construed as—limiting the applicability or effect of any Federal law related to the protection or management of fish or wildlife or to the regulation of commerce; limiting the authority of the federal government to prohibit hunting or fishing on any portion of the federal lands; or altering in any way any right of any Indian Tribe.

Section Four defines the term “state” as including the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

INTERNATIONAL ASSOCIATION
OF FISH AND WILDLIFE AGENCIES,

Washington, DC, February 9, 2005.

Hon. MARK UDALL,
House of Representatives, Cannon House Office
Building, Washington, DC.

DEAR CONGRESSMAN UDALL: The International Association of Fish and Wildlife Agencies, whose government members include the fifty state fish and wildlife agencies, strongly supports your bill to reaffirm state regulation of resident and non-resident hunting and fishing. This bipartisan bill is necessary to address the recent decision of the Ninth Circuit in *Conservation Force v. Manning*, 301 F.3d 985 (9th Cir. 2002), cert. denied, 537 U.S. 1112 (2003). That unprecedented decision concluded that hunting of big game in Arizona substantially affects interstate commerce such that differential treatment of residents and nonresidents must be strictly scrutinized by federal courts.

By subjecting to strict scrutiny analysis under the dormant Commerce Clause state

preferences for residents in highly prized species, the Ninth Circuit decision strikes at the ability of states to maintain the level of local sacrifice and contribution necessary to produce big game.

We appreciate your interest in rectifying the problems caused by the Ninth Circuit ruling and appreciate also the effort of your staff to assure the bill is sharply drawn so that it neutralizes the effect of the court ruling, but beyond that neither enlarges nor diminishes state authority. The limitations provisions of section 3 are written to insure that no existing federal or tribal authority relating to fish and wildlife would be affected.

Both resident and nonresident hunters and anglers contribute to conservation, yet it is essential to conservation efforts in the several States that the level of hunting and fishing opportunity for residents not be eroded. The passion and unity that derives from direct involvement by residents in fish and wildlife programs is a critical asset in resource protection and management. The bill you have introduced reaffirms that the states are the appropriate stewards of fish and wildlife resources within their borders, the hallmark of the highly successful model of fish and wildlife protection and management in the United States. Permit numbers, license fees, hunt areas and season dates are best handled through the legislative and rulemaking processes at the state level.

Thank you again for your initiative in taking this bill forward. We look forward to working with you and your staff to achieve enactment of the bill.

TERRY CRAWFORTH,
President.

IN PRAISE OF OSCAR NOMINATION FOR AUTISM DOCUMENTARY

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 9, 2005

Mr. BURTON of Indiana. Mr. Speaker, tonight I stand up to do something which some of my colleagues might at first glance think is unusual; namely I intend to praise the Hollywood establishment, and more precisely, the Academy of Motion Pictures Arts and Sciences. Normally when Members come to the Floor to talk about Hollywood, it is to discuss how out of touch Hollywood is with mainstream American values, but tonight I would like to commend Hollywood for doing something right. In a few short weeks are the Academy Awards, and this year there is a very special nominee in the category of documentary short subject; a concise film entitled: “Autism is a World.”

This groundbreaking documentary gives viewers a front row seat into a week in the life of an extraordinary woman, Sue Rubin, as she confronts the day-to-day challenges of living with autism. The film’s story chronicles Sue’s journey to overcome her autism and a false childhood diagnosis of mental retardation to become a highly intelligent college junior—with an IQ of 133—and a tireless disabled rights activist. But Sue is not only the star of the film she is also the film’s writer—she wrote the entire screenplay through facilitated communication, a process by which a facilitator supports the hand or arm of a communicatively im-

paired person while using a keyboard or typing device. Joining forces with Oscar award winning director, Gerardine Wurzburg, and Syracuse University Professor Douglas Biklen, founder of the Facilitated Communication Institute at Syracuse University, these three gifted individuals created a powerful film that tugs at the heart strings and at the same time challenges all the commonly held perceptions and stereotypes of autism.

Sue Rubin is truly an exceptional young woman. From the very beginning she never allowed herself to fall victim to her disability; and since the age of 13—when she was first able to show her true intelligence and express herself to the world through facilitated communication—she has used her experience to educate others about autism, and has been a shining example to her fellow students at Whittier College in California where she excels as a history major. She has also traveled throughout the United States to speak out publicly in support of the autism community and facilitated communication.

Medical research has not unlocked all the answers to autism and its causes, but through films like “Autism is a World,” and the incredible efforts of individuals like Sue Rubin, Douglas Biklen and Gerardine Wurzburg to reshape the way we think about autistic individuals we will hopefully come to realize that individuals afflicted with autism have so much to offer the world. I congratulate Sue Rubin and thank her for this courageous film; it is an excellent contribution to this year’s Academy Awards. I wish everyone associated with this film the best of luck on Oscar night.

TRIBUTE TO ALBERT ROUTIER VAUGHAN

HON. LINCOLN DAVIS

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 9, 2005

Mr. DAVIS of Tennessee. Mr. Speaker, Mr. Albert Routier Vaughan passed away on December 25, 2004, after a distinguished career spanning 42 years with the U.S. Secret Service and Vanderbilt University and a well-earned retirement. He was a resident of Highlands, North Carolina, at the time of his death.

Mr. Vaughan was born Albert Pouletaud in Paris, France, but became friends with a detachment of U.S. Marines in World War I. These marines were instrumental in getting him to the United States. Ted Vaughan, a sergeant in the detachment, gave young Albert instructions on how to reach the Vaughan household in Nashville. Ted Vaughan was a law enforcement officer. He helped young Albert, who became a Vaughan, with his career as a U.S. Secret Service Agent.

Mr. Vaughan served with distinction in his 32 year career with the Secret Service. He received many distinguished awards, including the prestigious Albert Gallatin award. He served ably under five presidents from Hoover to Kennedy.

After his retirement from the Secret Service, Mr. Vaughan served for 10 years as Director of Safety for Vanderbilt University in Nashville. His experience in the Secret Service proved