

HOUSE OF REPRESENTATIVES—Thursday, October 10, 1991

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We pray, gracious God, that we will be good stewards of the time and the talents You have given us. We know that to the person who has received much, from that person will much be required. May we give thanks for the abilities and responsibilities that we have received and then employ those gifts in service to others. May we use our minds to seek wisdom, our voices to speak the truth, our hands to do the works of justice, and our hearts to be open to the concerns of the neediest among us. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Rhode Island [Mr. REED] please come forward and lead the House in the Pledge of Allegiance.

Mr. REED led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

CONSTITUENTS SPEAK OUT ON UNEMPLOYMENT

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

Mr. REED. Mr. Speaker, in the last few weeks I have addressed the House on numerous occasions with respect to the extension of unemployment benefits. Today, I will let my constituents speak for themselves on this important issue.

One letter I received in my office was addressed to the President. It said:

New England has the highest level of unemployment. Are you out to get this section of the country? What are you thinking of? Don't you think it is about time you start paying some attention to the domestic problems and help Americans first? We need help now. Mr. President, read my lips, it is an emergency in Rhode Island.

One woman called my district office to say that she works for a closed cred-

it union. Her husband has been laid off from his job. They have two children. They desperately need extension of unemployment benefits.

Another letter came from an older woman who returned to college and now finds herself owing \$13,000 in student loans and unable to find a job. Every agency she has contacted or applied for aid has told her she is "just one of those people who fall through the cracks."

Mr. Speaker, my constituents do not understand why the President will not sign this legislation. As one letter read:

I am sure I am not alone in wondering where the President gets his views on the economy. What papers does he read? Most of the news I read is bad. Maybe you should see that the President glances at the business section of the Boston, Hartford, and Providence papers.

We must help these people, working people who need a chance to reorder their lives. I urge the President to sign this legislation, get on with helping America.

H.R. 1414, TO AMEND THE INTERNAL REVENUE CODE OF 1986 WITH RESPECT TO TREATMENT OF CERTAIN REAL ESTATE ACTIVITIES UNDER THE LIMITATIONS ON LOSSES FROM PASSIVE ACTIVITIES

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

Mr. QUILLEN. Mr. Speaker, today I rise in support of H.R. 1414, a bill which would correct present law concerning the application of the passive loss tax rules to rental real estate. This legislation has over 300 cosponsors and I urge the distinguished chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, to bring this bill to the floor.

Currently, under the passive loss rules, real estate professionals are effectively taxed on their gross, not net, income. The result is that many real estate investors are unable to continue to carry troubled properties and wind up turning them over to the lenders. In turn, many financial institutions are going under or are dangerously close to doing so because of large inventories of real estate they have taken back from borrowers.

The distinction under the passive loss rules between rental real estate and other types of activities should be eliminated. I believe enactment of H.R.

1414 will help improve the health of the Nation's financial institutions and assist in reversing the devaluation in real estate prices.

Mr. Speaker, the passive loss rules did not originate in the House. The effort to correct these economically damaging rules should not depend on another tax vehicle to drive H.R. 1414 through the House and into enactment. If need be, this bill should stand on its own and be considered and approved by the House before the end of this session.

A LETTER FROM A CONSTITUENT

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

Mr. DURBIN. Mr. Speaker, as the President ponders whether or not to sign the Democratic bill to extend unemployment benefits, I would like to read to this House of Representatives and those watching these proceedings a letter I received recently from one of my constituents, which I think accurately portrays what millions of Americans are faced with today:

THE HONORABLE DICK DURBIN: This is the first time I have ever written to a Member of Congress, and now only because I am becoming very concerned with our future. On January 21, 1991, after 37 years with the same corporation, I was laid off at the age of 55 years. I have applied and filled out over 103 applications for employment and have not received one offer for employment.

I used to receive over \$26 an hour. Now I cannot even get a job with minimum pay. The pension and savings I worked for my entire life will eventually be lost. I know I am just one of many with this problem.

Please, I beg of you. What are we to do? This unemployment problem has got to be recognized and owned up to by the Government now before it is too late. It is serious out here. Now, help me, before we are all on welfare.

President Bush doesn't care.

That is the end of the letter. Mr. Speaker, instead of pushing for a cut in the capital gains tax for the rich, I hope the President will listen to the millions of Americans who have exhausted their unemployment benefits and sign the Democratic bill to help the unemployed through these very difficult times.

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman from Pennsylvania will state it.

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Mr. WALKER. Is it not a violation of the rules of the House to refer to people beyond the Chamber, such as those watching the proceedings on television and those out across America?

The SPEAKER. The gentleman is correct. Members are expected to address the Chair.

Mr. WALKER. And as a further parliamentary inquiry, may I assume that the Chair simply did not hear the gentleman from Illinois do that and, therefore, did not call him to order for that reason?

The SPEAKER. The gentleman is correct.

Mr. WALKER. I thank the Chair.

THE MANAGUA CONNECTION

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

Mr. BALLENGER. Mr. Speaker, I rise to address another element of the concern shared by many of my colleagues and myself about the reports of Democrat Members of Congress providing information and advice to the Marxist Sandinistas of Nicaragua. That is the news earlier this week that former Assistant Secretary of State Elliot Abrams has pledged guilty to misdemeanor charges of having lied to Congress.

Now I do not under any circumstances condone lying to Congress by any member of the executive branch. But some might understand Mr. Abrams motivation if one knew that the knowledge he was sharing with Congress would likely be passed on to the Sandinistas before the day was over.

Mr. Speaker, it is clear to me that we need full disclosure on the Democrats' Managua connection. We have been pursuing vigorously members of the executive branch involved in the Iran-Contra matter, it is only fair and just that we pursue with equal vigor reports of Democrats Members of Congress providing information and advice to the Marxist Sandinistas.

THE PRESIDENT'S ATTENTION

(Mr. DOOLEY asked and was given permission to address the House for 1 minute.)

Mr. DOOLEY. Mr. Speaker, American families may now have the attention of President Bush.

He was spotted recently on American soil at the Grand Canyon.

He needed a TelePrompTer, but he did visit an American classroom.

And he has even recognized that "all is not well" with the American economy.

Let's hope that the Bush administration now is turning more of its leadership—and America's resources—to addressing problems here at home.

Affordable, accessible health care.

An education system that prepares young Americans to be competitive in the world's economy.

An end to a poverty level that is embarrassing for a country so rich in resources and leadership.

Those are some of the issues that American families are looking to their President and their Congress to address.

We can no longer afford to turn our backs on the needs of American families.

SMALL GROUP HEALTH INSURANCE REFORM

(Mr. THOMAS of Wyoming asked and was given permission to address the House for 1 minute.)

Mr. THOMAS of Wyoming. Mr. Speaker, 60 percent of the working uninsured, and their dependents, are employed by small businesses. We need to make it possible for small businesses to efficiently help provide quality health care. Employers should not be required to pay the premiums but they should be asked to offer access to coverage.

Let us start by reforming the small group health insurance market to include everyone. Coverage should not be denied or cancelled because individuals have high health costs or have to change jobs.

If insurance is to be the method of funding, and I favor that, we have to make it possible for small business to offer group packages to their employees. We need to define a basic package and it should be transferable when employees change jobs. This is the No. 1 way to reach the working uninsured and now is the time to provide universal access to health care.

Mr. Speaker, there are private sector alternatives to nationalized health care.

□ 1010

SUPPORT DEMOCRATIC UNEMPLOYMENT COMPENSATION EXTENSION BILL

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

Mr. WISE. Mr. Speaker, the President has said that he intends to veto the unemployment compensation bill, the extension of benefits, and yet the Republican leaders have been urging an alternative.

Let us take a look at that alternative. The bill that this House passed, sponsored by the Democratic Party, provides that 80 percent of those who have exhausted their benefits would get an extension of benefits up to 20 weeks. The other bill, the Republican bill, would exclude 80 percent of those persons.

The bill passed by this House would provide up to 20 weeks with those persons who have exhausted their regular benefits. The other bill would only provide for 6 weeks.

Finally, the reach-back provision that would go to those beneficiaries would apply not to the States with the highest unemployment such as mine in West Virginia, but would apply only to six States, six States out of the entire Nation.

I think it is quite clear which bill is preferable, and which approach. The working families of America are tired of all of this delay.

We urge that the President sign this bill and let them get this temporary extension of benefits that they are entitled to, and which they have seen in past recessions.

CAMPAIGN FINANCE REFORM

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

Mr. BARRETT. Mr. Speaker, after months of deliberation and promises, the majority is proposing legislation for campaign finance reform. Unfortunately, it is legislation that continues to emphasize overall and personal spending limits without establishing funding guidelines. Perhaps the resistance to real reform stems from the fact that the other side of the aisle doesn't want to change the system it benefits from most.

FEC data reveal that, Democrat incumbents receive, on average, more than half of their campaign funds from political action committees. How can challengers from either party compete with that?

In addition, the FEC data show House Democrats receive the vast majority of large contributions that flow across State lines. Can we call this democracy? A Member of Congress is supposedly elected by a majority of the voters in a particular district. Shouldn't a candidate raise at least the majority of his or her campaign money from that district?

Common sense calls for a better balance between those who hold the power of influence. We must reverse the trend that has given us a system where money talks, and where often the most important, and certainly most time-consuming issue is fundraising for next year's election.

There are sound ideas out there for real campaign finance reform—and I think they are on this side of the aisle.

Congress needs to clean up its act—both in how we conduct our work here in Washington—and also in how we conduct and finance our campaigns. Let's keep the ball rolling—schedule campaign finance reform for consideration, Mr. Speaker, and give us the chance to consider the good Republican

alternative to the recommendation of your task force.

ENACT THE UNEMPLOYMENT INSURANCE REFORM ACT

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

Mr. BUSTAMANTE. Mr. Speaker, last Friday, President Bush took heart with the release of last month's unemployment figures which showed a drop of one-tenth of 1 percent from 6.8 to 6.7 percent. In his press conference, the President said the drop was "one more sign that the economy is strengthening."

Since that news conference, the following news was reported:

Westinghouse announced it would lay off 4,000 employees;

Boeing released plans to reassign or layoff 2,500 employees;

Du Pont said it will eliminate 440 jobs; and

Yesterday, Allied-Signal announced it would cut 5,000 jobs.

Since Labor Day, the following companies made large lay-off announcements:

Union Carbide will layoff 5,500 workers;

Pan Am, 5,000 workers;

First Interstate Bank, 3,500 employees;

Pacific Telesis, 3,000 workers;

First Union Corp., 2,800 layoffs;

Southwestern Bell, 1,900; and

Each week the list continues to grow.

The President can take heart in the latest unemployment report, but the business news does little to inspire confidence in the economy. Thus far, President Bush's economic agenda for America is built on a pillar of pink slips. These job losses are occurring in white-collar, middle-income jobs. This is a middle-class recession.

Yes, we are gaining, but we are gaining in minimum wage jobs. The President can do something to ease the pain of this recession. He can sign the Unemployment Insurance Reform Act.

TIME FOR AN ECONOMIC COURSE CHANGE

(Mr. HANCOCK asked and was given permission to address the House for 1 minute.)

Mr. HANCOCK. Mr. Speaker, it has been 1 year since the much-trumpeted budget summit of 1990. And what a year it has been—a year of nothing but bad economic news.

The Heritage Foundation has documented this bad news in a new study—and it is grim. Two million more Americans are out of work, the deficit has soared to more than \$350 billion, personal and business bankruptcies are at all-time highs, family incomes are falling, and the rate of personal savings is approaching an all-time low.

How can we call ourselves representatives when we allow this mayhem to continue? This recession is not due to forces beyond our control—it is a direct result of the Government's massive interference in the economy and a Congress that wants to place blame on the administration rather than correct the problem.

It's time to change course. It's time to cut taxes. It is time to reduce burdensome regulations, to cut pork barrel spending, to stop bouncing checks—our's and the Nation's. It's time to get out of the way and let the American economy grow.

ISRAEL HAS GONE TOO FAR

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

Mr. TRAFICANT. Mr. Speaker, Israel is conducting surveillance flights over Arab territory, and last night militant Jews in Jerusalem kicked in doors and threw terrorized Arab families out into the street.

Mr. Speaker, Israel has gone too far. The truth is, Israel is pressuring Congress for the \$10 billion loan guarantee. It is a power play, pure and simple. You know it, I know it and everybody in this country knows it.

Even though America is bankrupt and our workers are running out of employment benefits, Congress continues to shell out \$5,000 for every man, woman, and child in Israel each year, and it is not enough. I say it is time to reassess this foreign aid part and start taking care of our unemployed, start taking care of our own country before we become a Third World country.

BREAST CANCER AWARENESS MONTH

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

Mr. HOBSON. Mr. Speaker, I rise today in a continuing effort to promote awareness of breast cancer, one of the most urgent health issues currently facing the women of our Nation.

October has been designated as "Breast Cancer Awareness Month." Over 3,000 constituents in my congressional district have contacted me regarding breast cancer. Women and their families are frightened by newly released statistics which state that 44,000 women will die from breast cancer this year. It is obvious to me that people are demanding action to address this issue.

I have continued to expand my own awareness on this issue through meetings with several women's groups. The statistics hit home for me during one meeting when I realized that one out of the nine women I was speaking with

would be diagnosed with breast cancer during her lifetime.

One of the most important steps which we can take as a Nation is to promote prevention. According to the National Cancer Institute, breast cancer deaths could be reduced by 30 percent if all women underwent regular mammographies. As an Ohio State senator, I worked as an advocate for proposals to expand insurance coverage for screening mammographies.

In my role as vice chair of the Bipartisan Congressional Caucus for National Health Care Reform, I am glad to continue to promote improved health care for women. My wife, Carolyn, is also committed to this issue, traveling throughout Ohio's Seventh Congressional District to promote early detection of breast cancer. It is vital that we continue to work together to educate women and their families on the early detection and treatment of breast cancer.

□ 1020

SUPPORT PAY-AS-YOU-GO PLAN FOR RTC FUNDING

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

Mr. SLATTERY. Mr. Speaker, economic growth has averaged 1.6 percent under the Bush administration. This is the worst economic growth record in over 40 years. Real disposable per-capita income is now lower than when this administration took office.

These measures of economic stagnation are a direct result of the immoral 10-year policy of deficit spending pursued by the last two administrations that has resulted in the tripling of our Nation's debt.

On Tuesday the Financial Institutions Subcommittee approved legislation that would require that \$60 billion in RTC funding be paid for up front on a pay-as-you-go basis. That is \$60 billion that should be paid, not billed to our children and grandchildren.

This legislation is an important first step in leveling with the taxpayers. I urge my colleagues to support this plan and require the President and the Congress to work out a pay-as-you-go plan for the RTC funding.

This approach will save our children and grandchildren more than \$125 billion.

LAWS AND REGULATIONS CANNOT BE "ONE-SIZE-FITS-ALL"

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

Mr. IRELAND. Mr. Speaker, the Resource Conservation and Recovery Act requires underground petroleum stor-

age tank owners and operators to demonstrate that they have the ability to pay for cleanup costs and third-party damages in the event of a leak.

The regulations implementing the act state that these requirements may be met through the purchase of an insurance policy.

However, while the rule is scheduled to take effect in just a couple of weeks, this option is not readily available to very small enterprises. I therefore applaud the Environmental Protection Agency for proposing to extend the compliance deadline for smaller firms through December 31, 1992.

Of course, we must protect and preserve our environment. As a resident of Florida's gulf coast, I am well aware of how fragile and precious our natural resources are.

But I also know that we must set compliance terms in our laws and regulations that do not overwhelm the financial or technical ability of smaller firms who are doing their best to comply.

Mr. Speaker, we need to keep this balance in mind as we pass new laws and as we oversee agencies who issue regulations.

Therefore, I would urge my colleagues to remember as such laws come before us that it is easy to say that you are all for small business. But it is how you vote that really counts.

PAY ATTENTION, MR. PRESIDENT

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

Mr. PRICE. Mr. Speaker, President Bush called a press conference last week to announce that there is a recession after all. The next day, the banner headline in my hometown newspaper read, "Bush Insists He Cares About U.S."

Well, actions speak louder than words.

When is our Nation's leader going to recognize that our schools are in decline, and that too many students are graduating without the fundamental job skills needed in the workplace? Or that home ownership rates are dropping for the first time in 40 years? Or that the middle class is being squeezed by taxes imposed during the Reagan-Bush administrations? Or that 37 million Americans have no health insurance? Or that millions more can't afford the quality health care they need?

When are we going to see the President's plan of action for rescuing our economy? And when are we going to see his plan of action to solve these problems? Perhaps those issues will be addressed in future press conferences.

In the meantime, Congress is fighting to make life better for American families who have suffered the most in this recession. We've passed a bill to extend

jobless benefits for these Americans. But President Bush, who has finally recognized the recession, still plans to veto the unemployment compensation bill.

Never mind that this is the first recession in 30 years in which jobless benefits haven't been extended. Never mind that this is the first time in the 56-year history of unemployment compensation that so few of the jobless—only 40 percent—have received benefits at all. Never mind that this is the first recession in which unemployment benefits have been fully taxable. Never mind that the dedicated funds collected to cover just such a need is now over \$8 billion in surplus, being withheld by the administration to offset expenditures in other areas.

My home State of North Carolina is better off than many others. Yet our unemployment rate has increased more than 50 percent in the last year. Once again, we in North Carolina are waiting for action to back up President Bush's rhetoric.

When is our President going to prove to North Carolina—and the rest of this country—that he can do more than talk about how much he cares about the pressing domestic agenda facing us?

EACHES AND PEACHES

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

Mr. ROBERTS. Mr. Speaker, today in Washington we will see another of what will be many demonstrations for nationalized health care.

Let me emphasize that health care is a bipartisan issue, the No. 1 issue of concern that I found on my tour of my district in August—58 counties in our very rural and smalltown area.

As cochairman of the Rural Health Care Caucus, with my colleague and friend, the gentleman from Texas [Mr. STENHOLM], we are seeking bipartisan answers. But I worry that we already see partisan lines being drawn regarding the all-or-nothing rush to nationalized health care.

We can do a great many things to restore and improve our current health-care delivery system before we leap headlong into that kind of care. One such program is the essential access hospital and primary care hospital program. The acronym for these programs is about the best in Washington. It is called "Eaches and Peaches."

Mr. Speaker, each hospital provides emergency and medical backup in our rural areas, and the peach hospital provides 24-hour emergency care that then transfers the patient to a larger facility.

It is a good program, Mr. Speaker, and HCFA has announced grants to seven States. These regulations should be announced within weeks.

Mr. Speaker, let us focus on what we can do in regard to health care and not what we cannot do.

WHAT IS PRESIDENT'S POLICY ON SEXUAL HARASSMENT?

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

Mr. FAZIO. Mr. Speaker, we know the President's position on Clarence Thomas, but what is his policy on sexual harassment?

The events of the last few days have unleashed a torrent of feelings in this country about the status of women, and that is all to the good. Because there are injustices that need to be addressed.

The Republican administration is attacking the reproductive freedom of women, and the President has veto threats against a variety of Democratic bills that protect choice.

The Republican administration is attacking our family and medical leave bill, and the President has veto threats against it.

Republicans in the House—142 strong—voted Tuesday to silence one of our outstanding female colleagues, whose only desire was to make a statement against sexual harassment—no small irony there.

And finally, there is the deafening silence from 1600 Pennsylvania Avenue. Does not the moral leader of our country have anything to say against the sexual harassment of women?

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. REED). The gentleman will state his parliamentary inquiry.

Mr. WALKER. Mr. Speaker, the actions of the House the other day referred to by the gentleman in his previous speech: Was not the gentlewoman in question called to order by the Speaker of the House for words that she uttered that were unparliamentary?

The SPEAKER pro tempore. The gentleman is correct.

Mr. WALKER. And the vote in the House was on that particular issue. Is that not correct?

The SPEAKER pro tempore. The vote was to allow the gentlewoman from Connecticut to proceed in order.

Mr. WALKER. Yes. As a parliamentary inquiry; was not the vote on whether or not to uphold the Speaker's ruling?

The SPEAKER pro tempore. No. The vote was to allow the gentlewoman from Connecticut to proceed as in order.

Mr. WALKER. To proceed despite the fact that the rules call for her not to be

permitted to speak having violated the rules of the House? Is that not correct?

The SPEAKER pro tempore. The question was whether or not the gentlewoman from Connecticut was allowed to proceed in order. The House voted to allow the gentlewoman to proceed in order.

Mr. WALKER. Notwithstanding the rules?

The SPEAKER pro tempore. The Chair stated the question, and the Chair thinks it is accurate.

Mr. WALKER. Notwithstanding the rules though? Is that not correct, Mr. Speaker? That is my parliamentary inquiry.

The SPEAKER pro tempore. The Chair has stated the question the way the Speaker stated the question, and the way it was put to the House and was voted by the House.

Mr. WALKER. I thank the Chair.

CAMPAIGN REFORM

(Mr. UPTON asked and was given permission to address the House for 1 minute.)

Mr. UPTON. Mr. Speaker, the American public's growing cynicism toward Congress in the last few years has crescendoed in the last few weeks.

Recent abuses of Members' privileges have left the American public even more dismayed. Add the fact that we cannot balance the budget, is it any wonder why voting participation in congressional elections is at its lowest point ever?

The time is ripe for the House to pass a congressional campaign reform bill that rids the House Members of their biggest perk, election laws that guarantee incumbents a 98-percent reelection rate. If we are serious about reducing our constituents' cynicism about Congress by reforming campaign laws, we should take steps to make the individual voter's voice the strongest one in the election process.

PAC's contribution limits should be reduced, and candidates should raise most of their funds from individual voters in their home State. Let us return the people's House to the people and enact real campaign reforms that give individual voters the largest voice in elections and campaign funding.

If we enact campaign reform legislation that requires candidates to raise the majority of their funds from people in their home States, then that is where Members will spend most of their time.

MAKE BANKING REGULATION MORE REASONABLE

(Mr. FRANK of Massachusetts asked and was given permission to address the House for 1 minute.)

Mr. FRANK of Massachusetts. Mr. Speaker, I was pleased to see the President and the Secretary of the Treasury

move forward with proposals to make banking regulation more reasonable.

The regulatory problems we have encountered have not been the prime cause of difficulty in the availability of credit, but I believe they have been an exacerbating factor.

I think there has been an over-reaction. The people who were too lax in the 1980's thought they could somehow make that up by being too rigid in the 1990's.

I had hoped that the President and the Secretary of the Treasury would have moved in this direction earlier. I was a little puzzled when I read of the President criticizing the regulators as if they were somehow parachuted in here from some other jurisdiction and were people beyond his control.

But the package of changes, the encouragement they have given to the regulators to be reasonable, which the President and the Secretary of the Treasury have now put forward, I think, are appropriate responses to the economic difficulties we now face.

□ 1030

I congratulate them for doing it. I hope that the Secretary of the Treasury will follow through, because past experience has shown us that his personal supervision of this package of proposals will be a necessary element in its implementation.

HEALTH CARE, LET US DO IT

(Mrs. JOHNSON of Connecticut asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. JOHNSON of Connecticut. Mr. Speaker, not one of us goes anywhere in our districts without facing people who are without health insurance, who are very much afraid of losing their health insurance, who are not covered for catastrophic illness, and in general who need government action to assure their health access and health security.

Many in this body have espoused nationalizing our health care system. That kind of macroaction could create a system that is as rigid and devoid of compassion as IRS policies; that is as inefficient, with some good reason, as our postal system, that is as costly for all the same reasons as our defense system.

Mr. Speaker, it is imperative that we not fail our constituents while we engage in this macrodebate about nationalizing America's health care system. It is imperative that we begin to deal with those specific things, and there are many Republican bills with very concrete ideas out there and many from the other side that demonstrate that we could better fund these rural health clinics that my colleague, the gentleman from Kansas, just talked about; not much money, certainly not much relative to the highway project bills we just passed.

Mr. Speaker, let us do it, let us do it, let us do it.

THE UNEMPLOYED NEED HELP

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

Mr. FLAKE. Mr. Speaker, I rise this morning to share with the Members of the House a recent meeting I had with a young lady who for 14 years worked with one bank. That bank laid her off. For the last few months she has been busily and aggressively pursuing and trying to get another job, trying to get a job in an industry that is downsizing, in an industry where there are many layoffs; yet there are many who come to the well of this House and speak against the extension of unemployment benefits.

I would want to remind my colleagues that persons like this young lady are not asking for a handout. They are not asking to be treated as if they were on welfare. They are not saying they do not want a job. She is pursuing a job.

The reality is that the market is tight in so many fields. I think it is appropriate that we as Members of the House of Representatives understand that many of our constituents want to work. They just cannot. The market does not allow them to.

So I am urging that we continue to work with the President in the hopes that there is no veto. Let us work with the President in the hopes that we can give to people that which is rightly theirs. She has been paying her unemployment compensation during the period of her work. Now she needs us to pay her.

A TRIBUTE TO THE LATE GEORGE RUSSELL

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

Mr. COBLE. Mr. Speaker, a friendly face is conspicuously absent from this floor today. I refer, of course, to George Russell, our friend who passed away last Friday.

Because of where George sat on the podium behind me, oftentimes his face was the first one seen on television screens. Even when the President would come to deliver a State of the Union Address, George's face would first appear many times.

On one occasion I had North Carolina schoolchildren here and I introduced them to George Russell. One of the girl's instinctively remarked, "Oh, I've seen him on television." George smiled approvingly.

George was graduated from North Carolina A&T State University in Greensboro, located in my district. On

one occasion he volunteered to work the gate for me at a homecoming football game. He and I did indeed work the gate. He would see old alumni, friends of his, and would bring them over and introduce them to me.

The passage of time has a way, Mr. Speaker, of assuaging discomfort and pain, but we of the House who knew him will fondly and frequently recall George Russell.

PREVENTIVE HEALTH CARE FOR AMERICANS

(Ms. OAKAR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. OAKAR. Mr. Speaker, we had hundreds of women and their families come to Washington to call attention to a crisis in a disease called breast cancer. Frankly, I was dismayed that the media paid so little attention to their plight. They came from 50 States. Many of them were breast cancer victims. Many of these women were under 35 who could never have children again because they had chemotherapy treatment.

We have an epidemic on our hands with respect to not only breast cancer but the crisis in health care in this country.

I am foursquare for universal health care for every American, including preventive health care which would include mammography and wellness programs for children and immunization, cancer screening for men and long-term care, since we have 8 million Americans who are older and who have families with chronic problems who cannot care for their loved ones without home care and nursing care services.

So, Mr. Speaker, let us be all-American about our people and improve the quality of life by having comprehensive health care, including preventive care for all Americans.

A \$1 TRILLION ERROR

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

Mr. DOOLITTLE. Mr. Speaker, I rise today to speak about the \$1 trillion error. Today marks the 27th day until the first anniversary of the infamous 1990 budget summit agreement. Last year, Congress and the President agreed to raise taxes and reduce planned annual increases in spending, with the stated goal of lowering the budget deficit by \$500 billion at the end of 5 years.

Now after the largest single-year tax increase in history, it turns out the deficit is higher than it was before the budget agreement was even passed. In fact, from January 1990, until August

of this year, the projected 5-year deficit increased by over \$600 billion. If you count the \$500 billion originally projected in so-called deficit reduction by the original budget summit agreement, their estimate missed the mark by over \$1 trillion.

According to the number crunchers at the Congressional Budget Office and the President's Office of Management and Budget, this increase in the deficit is the result of "both technical and economic adjustments."

And who is hurt, Mr. Speaker, by this ever-growing deficit? Every man, woman and child in this great country, every person that earns an income or who depends upon a retirement income.

Mr. Speaker, I am not sure which is worse, the fact that CBO and OMB made a \$1 trillion error, or the fact that no one seems to care.

CAMPAIGN FINANCE REFORM IS NEEDED

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

Mr. MAZZOLI. Mr. Speaker, these are not the happiest of times on Capitol Hill. We are being pummeled because of the House bank situation. Certainly we have to get to the bottom of that, and those Members who, as a pattern and practice, overdraw on their accounts ought to be identified and sanctioned, if that be the decision of the Ethics Committee.

Congress is being pummeled because it may not be sensitive enough to sexual harassment in our offices. I think we should, as we have done in our office, publish and accept a program, a policy, dealing with this terrible activity.

One way, Mr. Speaker, that I think we could more quickly restore our somewhat sagging public image here on the Hill is to quickly pass a very tough campaign finance reform bill. Yesterday we talked about it in the Democratic caucus. There will be several reform proposals, all of them dealing with putting some type of limit on spending and reducing the effectiveness, or perhaps even control, political action committees have on the election process.

We need, Mr. Speaker, to get back to the grassroots, to go back to where politics really begins, and that is with the people. I think we can do it, but we have very little time remaining.

□ 1040

PHYSICIAN PAYMENT REFORM

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

Mr. GUNDERSON. Mr. Speaker and colleagues, before we adjourn this fall,

we have an important issue in front of us; it is called health care. One of the items we should accomplish this fall is dealing with legislation passed in 1989 called physician payment reform, or better known as RBRVS [resource-based relative value scale].

This was designed to create a more equitable reimbursement schedule for family practitioners which would be extremely helpful to physicians in rural communities like my district.

However, this past June the Health Care Financing Administration, I think most agree prodded and directed by OMB, released proposed regulations for implementation of physician payment reform. Those regulations indicate that most providers, including primary care physicians, will have their payments reduced by as much as 16 percent in 1996.

When the legislation was passed in 1989, assurances were made to the Congress that these reforms would be budget neutral. However, the proposed regulations indicate the payments will be reduced by \$7 billion over the next 5 years. That violates the agreement made as a part of the physician payment reform package.

Mr. Speaker, I am not saying that either side on this issue has all the answers, but I would suggest to all my colleagues before we conclude our business this fall it is incumbent upon us to work out a solution to this problem, to make sure family physicians are properly reimbursed and the program, as passed and intended by Congress, is implemented.

SEXUAL HARASSMENT: FAIRNESS ON CAPITOL HILL

(Ms. MOLINARI asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. MOLINARI. Mr. Speaker, you know, it does not take us long in this body before we take a disconcerting situation and use it for political expediency. We are all going through, as most men and women in this Nation are, a very difficult time on the charges of sexual harassment and the way we handle it here on Capitol Hill. We hope this will be an issue that will be dealt with sensitively and honestly, not in a partisan fashion.

But we have already heard this morning that is not going to be the case. Already, the blame is being put on the President. Let us make one thing clear here: The President, yes, supports Clarence Thomas, but the President was not in the room when charges of sexual harassment were leveled against Clarence Thomas.

Members of another political party, different from the President, did hear those charges and accepted to proceed. Members of the party violated Professor Hill's request for confidentiality

and jeopardized Clarence Thomas' reputation.

It was their decision that puts women in this country in such a defensive position today. It was their decision today that has us all questioning when it will end and we will have finally fairness on Capitol Hill.

MAKING CORRECTIONS IN ENROLLMENT OF H.R. 2622, TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1992

Mr. ROYBAL. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 219) making corrections in the enrollment of H.R. 2622, and I ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore. The clerk will report the concurrent resolution.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 219

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 2622) entitled "An Act making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending September 30, 1992, and for other purposes", the Clerk of the House of Representatives is hereby authorized and directed, to make the following corrections, namely, after the words "section 2401(c) had not been enacted" in the paragraph headed "PAYMENT TO THE POSTAL SERVICE FUND", strike the words "not to exceed 2.2 cents per piece".

The SPEAKER pro tempore (Mr. REED). Is there objection to the request of the gentleman from California?

Mr. WOLF. Mr. Speaker, reserving the right to object, and I will not object, I will ask the gentleman the purpose of this concurrent resolution. It is my understanding this is a technical amendment.

Mr. ROYBAL. Mr. Speaker, will the gentleman yield?

Mr. WOLF. I yield to the chairman of the subcommittee, the gentleman from California [Mr. ROYBAL].

Mr. ROYBAL. I thank the gentleman for yielding.

Mr. Speaker, this is a minor enrolling correction to H.R. 2622, the Treasury, Postal Service, and General Government Appropriations Act for 1992. It conforms the bill to the conference agreement reported in House Report 102-234. The conference agreement contains compromise language on the appropriation to the U.S. Postal Service which provides for an average rate increase of 2.2 cents per piece for certain types of mail. This concurrent resolution would correct an error and conform the bill to the conference agreement.

Mr. WOLF. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 1470, PRICE FIXING PREVENTION ACT OF 1991

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 241 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 241

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1470) to establish evidentiary standards for Federal civil antitrust claims based on resale price fixing, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and which shall not exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be considered for amendment under the five-minute rule and each section shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as having been ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit. After passage of H.R. 1470, it shall be in order to take from the Speaker's table the bill S. 429 and to consider said bill in the House. It shall then be in order to move to strike all after the enacting clause of said Senate bill and to insert in lieu thereof the provisions of H.R. 1470 as passed by the House. It shall then be in order to move that the House insist on its amendment to S. 429 and request a conference with the Senate thereon.

The SPEAKER pro tempore. The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the gentleman from California [Mr. DREIER], pending which I yield myself such time as I may consume.

Mr. Speaker, any time yielded is for the purpose of debate only.

Mr. FROST. Mr. Speaker, House Resolution 241 is a simple open rule providing for the consideration of H.R. 1470, the Price Fixing Prevention Act of 1991. The rule provides for 1 hour of general debate, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. Because House Resolution 241 is an open rule, any germane amendment, which does not otherwise violate a rule of the House, will be eligible for consideration during the 5-minute rule and the rule provides that during consideration

of the bill for amendment each section shall be considered as read.

Following the consideration of the bill for amendment, the rule provides that the Committee of the Whole shall rise and report the bill to the House with such amendments as may have been adopted, and that the previous question shall be considered as having been ordered on the bill and amendments thereto to final passage without intervening motion, except one motion to recommit. Finally, to facilitate conference action on this legislation, House Resolution 241 makes it in order to take S. 429 from the Speaker's table, and to consider that bill in the House. The rule provides that it shall then be in order to move to strike all after the enacting clause and insert the House-passed text of H.R. 1470, and to move to insist on the House amendment to the Senate bill and to request a conference.

Mr. Speaker, H.R. 1470 is important legislation. It is important because it confirms the commitment of the Congress to the workings of the marketplace and confirms our commitment to the American consumer that anti-competitive business practices are not acceptable. H.R. 1470 reaffirms Federal policy against vertical price fixing by codifying a 1911 Supreme Court holding that vertical price fixing is illegal per se, and clarifies the evidentiary standards under which a retailer who claims to have been injured by vertical price fixing is entitled to a jury trial. Mr. Speaker, I strongly support H.R. 1470 and urge my colleagues to support the rule in order that the House may proceed to the consideration of this probusiness and proconsumer legislation.

Mr. DREIER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 241, which provides for the consideration of H.R. 1470, the so-called Price Fixing Prevention Act of 1991. This is an open rule and, frankly, the best hope for salvaging what is clearly a very bad bill.

Mr. Speaker, it would be more appropriate to call H.R. 1470 the Punitive Damage Enhancement Act or, better yet, the Guilty Until Proven Innocent Act. H.R. 1470 purports to make illegal what is already illegal under our antitrust laws; that is, to ban vertical price fixing. This is a practice whereby a manufacturer and a retailer threaten a rival retailer with a cutoff of supplies if it does not charge a minimum price for the manufacturer's product.

In reality, H.R. 1470 shifts the burden of proof from the accuser to the accused. It will undermine competition by interfering with normal distributions agreements between manufacturers and dealers.

Fortunately, Mr. Speaker, this rule will allow several important amendments to be offered to correct the in-

herent flaws in this legislation. The gentleman from New York [Mr. FISH] will offer an amendment to clarify that the traditional antitrust proof of conspiracy requirements apply in dealer termination cases. It will also require the plaintiff to show that the major cause of his termination was a vertical price fixing conspiracy between the manufacturer and another party.

Likewise, my friend and colleague from California, TOM CAMPBELL, will offer his small business amendment, which will provide an exemption for companies that lack market power in the relevant market. These amendments, which were narrowly defeated in the previous Congress, will substantially improve H.R. 1470, which the President will veto in its current form.

For this reason, Mr. Speaker, I urge support for the rule, and I reserve the balance of my time.

Mr. Speaker, I include the following statement of administration policy.

STATEMENT OF ADMINISTRATION POLICY

If H.R. 1470 were presented to the President in its current form, his senior advisors would recommend a veto.

The administration opposes H.R. 1470 because it would inhibit manufacturers and distributors from entering into procompetitive distribution agreements for products in a wide variety of markets.

Under existing antitrust law, and notwithstanding the short title of the bill, distribution agreements that set resale prices are already per se illegal. H.R. 1470 would reduce the level of evidence needed to proceed to trial by creating an inference of unlawful conspiracy in certain cases. The inference would be based on evidence that is equally consistent with lawful, unilateral decisions by manufacturers regarding who will distribute their products. As a result, juries could misinterpret lawful business decisions as price fixing conspiracies. Because of the availability of treble damages, H.R. 1470 could invite a substantial increase in complex antitrust litigation.

H.R. 1470 could also render certain nonprice distribution agreements per se illegal, even though such agreements should be considered, instead, under the antitrust "rule of reason." Consideration under the "rule of reason" provides for the evaluation of procompetitive effects.

□ 1050

Mr. DREIER of California. Mr. Speaker, I yield 5 minutes to the very eloquent gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman from California [Mr. DREIER] for yielding this time to me.

Mr. Speaker, this is an open rule, and, therefore, because it is an open rule and does give the Members an opportunity to get at provisions of this bill, it is a fair rule, and that is in contrast to much of what we have seen happening in the House over the last several months. This is one of the relatively few true open rules that we have had on the House floor, and that is a disappointment. It seems to me that Members ought to be given the op-

portunity to work their will on legislation, particularly since the unfairness of the rule is only a part of the unfairness that pervades the processes and procedures of the House of Representatives.

Mr. Speaker, despite the language we have heard on the House floor even within the last couple of days about fairness in the operations of this body, we see example after example that fairness does not prevail in what we do here. We had an example yesterday of a bill on the floor where a junior Member, a junior Republican Member, had his project stripped out of the bill specifically because Committee on Appropriations' members told him that he made the mistake of voting for an across-the-board reduction in the appropriations bill. In other words, he wanted to save the taxpayers a little bit of money, but, when they went to the conference committee, this junior Republican found that a senior member of his delegation, as well as members of the conference committee, took away from him a project that had been built up over some years. In fact, it goes back to his predecessor.

Now that is what we hear from the majority is fairness. That does not happen to Democrats. That happens to Republicans.

We will have a bill on the floor today, later on perhaps, if it comes up, the Flint Hills National Monument. Again a junior Republican Member is having a bill forced upon him that his constituents do not want, that he does not want, that the Senator from the State does not want, that is a terrible bill. It is something that would not be done to Democrats. It is being done to a Republican, and it is specifically aimed at this junior Republican.

Mr. Speaker, that is the kind of fairness we see happen over and over again. That is just two examples in the last 2 days, and over and over again we see that kind of unfairness pervade the processes and procedures of the House.

In addition, Mr. Speaker, we see problems in terms of the protections that the Chair provides to Members of the body. We had an example yesterday on the House floor during a voice vote where there were no aye votes shouted from the floor, where there was a chorus of no votes, and yet the Chair called the vote for the ayes. Those kinds of unfair procedures and processes pervade the problem here and, it seems to me, are somewhat in contrast to this rule.

But this is in the minority. It is the exception rather than the reality.

Mr. DREIER of California. Mr. Speaker, I would like to associate myself with the remarks of the gentleman from Pennsylvania and simply say that the gentleman is absolutely right. While there has been a great deal of unfair treatment, it is clear that this rule is one of those few models of fairness

that I am very pleased to see having emanated from the other side of the aisle.

As was the case a week or 10 days ago, I plan to have a recorded vote on this rule so that we will have the opportunity to let Members on both sides know that occasionally there is a degree of fairness here.

Mr. WALKER. I, too, will vote for this rule as an open rule, and I think it is an example of the way the House ought to operate. But let us understand that this is the exception, and it is one of those situations where it is a growing exception rather than a stream of constant reality.

I want to make one more point about this rule. This rule does go to a very bad bill. We heard a number of speeches earlier on the House floor today about unemployment. This is truly another one of those bills coming from the party that wants to kill American jobs. Because truly this bill will kill American jobs. The manufacturers are opposed to it, small business is opposed to it, across the board the Americans who provide jobs are opposed to this bill, because it will kill jobs.

Now what we hear over and over again from our Domestic colleagues is, "Well, once they're out of a job, then the compassionate thing is to provide them with unemployment." Look, what we ought to have in this country is not more unemployment benefits. We ought to have less unemployed. We ought to give people real jobs. We ought not be using government policy to kill off jobs.

Mr. Speaker, if this bill is passed today in the form that it is brought to the House of Representatives and ultimately becomes law, and I certainly hope it does not, but if it ultimately becomes law, it will kill off thousands of American jobs. It will put more people on the unemployment rolls, and that will be a terrible shame.

Mr. DREIER of California. Mr. Speaker, I have no further requests for time, and yield back the balance of my time.

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

The previous question was ordered.

The SPEAKER pro tempore [Mr. REED]. The question is on the resolution.

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

Mr. DREIER of California. Mr. Speaker, I object to the vote on the ground 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.

The vote was taken by electronic device, and there were—yeas 412, nays 0, not voting 21, as follows:

[Roll No. 302]

YEAS—412

Abercrombie	Doolittle	Jenkins
Ackerman	Dorgan (ND)	Johnson (CT)
Allard	Dorman (CA)	Johnson (SD)
Anderson	Downey	Johnson (TX)
Andrews (ME)	Dreier	Johnston
Andrews (NJ)	Duncan	Jones (GA)
Andrews (TX)	Durbin	Jones (NC)
Annunzio	Dwyer	Jontz
Anthony	Dymally	Kanjorski
Applegate	Early	Kasich
Archer	Eckart	Kennedy
Army	Edwards (CA)	Kennelly
Aspin	Edwards (OK)	Kildee
Atkins	Edwards (TX)	Kleczyka
AuCoin	Emerson	Klug
Bacchus	Engel	Kolbe
Baker	English	Kolter
Ballenger	Erdreich	Kopetski
Barrett	Espy	Kostmayer
Barton	Evans	Kyl
Bateman	Ewing	LaFalce
Beilenson	Fascell	Lagomarsino
Bennett	Fawell	Lancaster
Bentley	Fazio	Lantos
Bereuter	Feighan	LaRocco
Berman	Fields	Laughlin
Bevill	Fish	Leach
Billbray	Flake	Lehman (CA)
Billrakis	Foglietta	Lehman (FL)
Bliley	Ford (TN)	Lent
Boehlert	Frank (MA)	Levin (MI)
Boehner	Franks (CT)	Levine (CA)
Bonior	Frost	Lewis (CA)
Borski	Galleghy	Lewis (FL)
Boucher	Gallo	Lewis (GA)
Brooks	Gaydos	Lightfoot
Browder	Gedjenson	Lipinski
Brown	Gekas	Livingston
Bruce	Gephardt	Lloyd
Bryant	Geren	Long
Bunning	Gibbons	Lowery (CA)
Burton	Gilchrest	Lowey (NY)
Bustamante	Gillmor	Luken
Byron	Gilman	Machtley
Callahan	Gingrich	Manton
Camp	Glickman	Markey
Campbell (CA)	Gonzalez	Marlenee
Campbell (CO)	Goodling	Martin
Cardin	Gordon	Martinez
Carper	Goss	Matsui
Carr	Gradison	Mavroules
Chandler	Grandy	Mazzoli
Chapman	Green	McCandless
Clay	Guarini	McCloskey
Clement	Gunderson	McCrery
Clinger	Hall (OH)	McCurdy
Coble	Hall (TX)	McDade
Coleman (MO)	Hamilton	McDermott
Coleman (TX)	Hammerschmidt	McEwen
Collins (IL)	Hancock	McGrath
Collins (MI)	Hansen	McHugh
Combest	Harris	McMillan (NC)
Condit	Hastert	McMillen (MD)
Conyers	Hayes (IL)	McNulty
Cooper	Hayes (LA)	Meyers
Costello	Hefley	Mfume
Coughlin	Hefner	Michel
Cox (CA)	Henry	Miller (CA)
Cox (IL)	Herger	Miller (OH)
Coyne	Hertel	Miller (WA)
Cramer	Hoagland	Mineta
Crane	Hobson	Mink
Cunningham	Hochbrueckner	Moakley
Dannemeyer	Horn	Mollinari
Darden	Horton	Mollohan
Davis	Houghton	Montgomery
de la Garza	Hoyer	Moody
DeFazio	Hubbard	Moorhead
DeLauro	Huckaby	Moran
DeLay	Hughes	Morella
Dellums	Hunter	Morrison
Derrick	Hutto	Murphy
Dickinson	Hyde	Murtha
Dicks	Inhofe	Myers
Dingell	Ireland	Natcher
Dixon	Jacobs	Neal (MA)
Donnelly	James	Nichols
Dooley	Jefferson	Nowak

Nussle	Rogers	Studds
Oakar	Rohrabacher	Stump
Oberstar	Ros-Lehtinen	Sundquist
Obey	Rose	Swett
Olin	Rostenkowski	Swift
Olver	Roth	Synar
Ortiz	Roukema	Tallon
Orton	Rowland	Tanner
Owens (NY)	Roybal	Tauzin
Owens (UT)	Russo	Taylor (MS)
Oxley	Sabo	Taylor (NC)
Packard	Sangmeister	Thomas (CA)
Pallone	Santorum	Thomas (GA)
Panetta	Sarpalius	Thomas (WY)
Parker	Sawyer	Thornton
Pastor	Saxton	Torricelli
Patterson	Schaefer	Towns
Paxon	Scheuer	Trafiacant
Payne (NJ)	Schiff	Traxler
Payne (VA)	Schroeder	Unsoeld
Pease	Schulze	Upton
Pelosi	Schumer	Valentine
Penny	Sensenbrenner	Vander Jagt
Perkins	Serrano	Vento
Peterson (FL)	Sharp	Visclosky
Peterson (MN)	Shaw	Volkmer
Petri	Shays	Vucanovich
Pickett	Shuster	Walker
Pickle	Sikorski	Walsh
Porter	Sisisky	Waters
Poshard	Skaggs	Waxman
Price	Skeen	Weber
Pursell	Skelton	Weiss
Quillen	Slattery	Weldon
Rahall	Slaughter (NY)	Wheat
Ramstad	Smith (IA)	Whitten
Rangel	Smith (NJ)	Williams
Ravenel	Smith (OR)	Wise
Ray	Smith (TX)	Wolf
Reed	Snowe	Wolpe
Regula	Solarz	Wyden
Rhodes	Solomon	Wylie
Richardson	Spence	Yates
Ridge	Spratt	Yatron
Riggs	Staggers	Young (AK)
Rinaldo	Stallings	Young (FL)
Ritter	Stark	Zeliff
Roberts	Stearns	Zimmer
Roe	Stenholm	
Roemer	Stokes	

NAYS—0
NOT VOTING—21

Alexander	Holloway	Sanders
Barnard	Hopkins	Savage
Boxer	Kaptur	Slaughter (VA)
Brewster	McColum	Smith (FL)
Broomfield	Mrazek	Torres
Ford (MI)	Nagle	Washington
Hatcher	Neal (NC)	Wilson

□ 1121

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.

LAYING ON THE TABLE HOUSE JOINT RESOLUTION 319, EXTENSION OF MOST-FAVORED-NATION TREATMENT TO PRODUCTS OF UNION OF SOVIET SOCIALIST REPUBLICS, ESTONIA, LATVIA, AND LITHUANIA

Mr. ROSTENKOWSKI. Mr. Speaker, I ask unanimous consent that the joint resolution (H.J. Res. 319) approving the extension of nondiscriminatory treatment with respect to the products of the Union of Soviet Socialist Republics, Estonia, Latvia and Lithuania be laid on the table.

The SPEAKER pro tempore [Mr. REED]. Is there objection to the request of the gentleman from Illinois?

Mr. ARCHER. Mr. Speaker, reserving the right to object, and I shall not ob-

ject, I do so for the purpose of yielding to the gentleman from Illinois [Mr. ROSTENKOWSKI] in order that he might explain his unanimous-consent request to the House.

Mr. ROSTENKOWSKI. Mr. Speaker, I thank the gentleman for yielding. Mr. Speaker, on August 2 the President transmitted to the Congress a proclamation that extends nondiscriminatory, most-favored-nation treatment to the products of the Soviet Union and the three Baltic States, together with the text of the trade agreement between the United States and the Soviet Union signed on June 1, 1990. Under the terms of title IV of the Trade Act of 1974 and the fast track congressional procedures for approval of trade agreements, the majority leader, minority leader, and several cosponsors introduced House Joint Resolution 319 on August 2, approving the extension of MFN treatment to the products of the Soviet Union, Estonia, Latvia, and Lithuania. This resolution was referred to the Committee on Ways and Means.

Since the introduction of this resolution, the Baltic States have been recognized as independent nations. In recognition of that status, the President transmitted to the Congress yesterday a new proclamation that extends MFN treatment under the terms of title IV only to the products of the Soviet Union. Yesterday, the majority leader and the minority leader introduced a new House joint resolution (H.J. Res. 346) as a substitute for House Joint Resolution 319 approving MFN treatment for the Soviet Union. The purpose of my unanimous-consent request is to put aside the first resolution so that the fast track procedures and time periods for committee and floor action will apply instead to the new resolution introduced yesterday.

With respect to the Baltic States, separate legislation is pending before the Committee on Ways and Means that would extend MFN treatment of Estonia, Latvia, and Lithuania on a permanent basis by exempting them from the title IV Jackson-Vanik annual review provisions.

I want to make it clear, Mr. Speaker, that laying House Joint Resolution 319 on the table does not establish any precedent for future actions under the so-called fast-track procedures. We are dealing with a unique situation and all parties, including the administration, the majority and minority leaders and the chairman and ranking member of the Committee on Ways and Means, are in agreement on this approach to address this matter.

However I continue to be concerned about the revenue implications of granting MFN status to the Soviet Union and the Baltic States. I have been corresponding with the Director

of the Office of Management and Budget, seeking his advice on how to offset the projected revenue losses, but I have not yet received a response which adequately addresses the pay-as-you-go requirements of last year's budget summit agreement. Although I support the President's MFN initiatives, I will not schedule committee consideration of these measures until I receive a response from the Office of Management and Budget which provides specific recommendations of appropriate offsets within the jurisdiction of the Committee on Ways and Means.

Mr. ARCHER. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

PRICE FIXING PREVENTION ACT OF 1991

The SPEAKER pro tempore. Pursuant to House Resolution 241 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1470.

□ 1127

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1470) to establish evidentiary standards for Federal civil antitrust claims based on resale price fixing, with Mr. SLATTERY in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Texas [Mr. BROOKS] will be recognized for 30 minutes, and the gentleman from New York [Mr. FISH] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield to myself such time as I may require.

Mr. Chairman, very rarely do economic principle and economic necessity come together so urgently as they do in the legislation now before us—the Price Fixing Prevention Act of 1991.

For decades, this body has bolstered the distinctive American free enterprise system by refusing to tolerate, countenance, or condone any form of price fixing in the economy. Why? Because price fixing spells the death of open competition; because it strangles the possibility of having multiple players compete in an open and free-moving economy; and because it works a fundamental disadvantage to the ultimate consumer—the American public.

Since 1890, when the Sherman Act was passed, we have done well in hold-

ing firm to our principles. But the economic landscape is changing quickly and dangerously—at the same moment that democracy, free enterprise, and antitrust are being embraced by the newly liberated countries of Eastern Europe and the newly emerging economies of the Third World, price-fixing activity is resurfacing in America because of lax and confusing enforcement of the antitrust laws.

The reappearance of price fixing is not just of academic interest, it is a real threat to Americans' pocketbooks and is now costing the American consumer more than \$20 billion every year.

Vertical price fixing—or resale price maintenance—typically begins when a full-price retailer complains to a manufacturer about a discounter's competitive pricing. The full-price retailer's threats usually include a refusal to sell the manufacturer's products unless a manufacturer cuts off the discounter. If the full-price retailer has enough economic clout to coerce the manufacturer to cooperate in this conspiracy, consumers will end up paying inflated prices and low-price retailers are deprived of their ability to compete.

In the past, manufacturers could stand up to those pressure tactics because they knew that they were against the law and would subject all conspirators to treble damages. But now, without any enforcement by the Federal antitrust agencies, too many manufacturers are going along, afraid to just say no to their pricey retail outlets.

For over 80 years, vertical price fixing, in all its forms, has been illegal. However, in 1981, the Justice Department cooked up a bunch of theoretical reasons to break with this longstanding congressional policy, and since that time, it has failed to prosecute a single vertical price-fixing case. Even worse, two Supreme Court decisions over the past decade have confused the law and made it practically impossible for low-price retailers, like discount stores, who are victims of vertical price-fixing conspiracies, to get to a jury to hear their case.

Mr. Chairman, H.R. 1470 safeguards the rights of the consumer by reaffirming the ban on vertical price fixing. It also safeguards the rights of all businesses that sell discounted goods, from the smallest retailer to the largest discounter. The bill has been carefully crafted to avoid disturbing traditional antitrust conspiracy standards or interfering with the freedom of businesses to conduct their own affairs in the absence of illegal and unfair conspiracies.

Certainly—and not least important—if the economy is to revive quickly, it will be largely because Americans will spend their hard-earned dollars for affordable goods and services. But let's be candid: Americans are not spending

for goods and services as they have in the past. In this environment, it is misguided, to say the very least, to permit vertical price fixing to flourish so that all Americans would have to pay the Bloomingdale's price or the Neiman Marcus price if they are going to purchase at all.

Yesterday, all of the Members received a letter from 48 out of 50 State attorneys general of this Nation supporting H.R. 1470. They are Democrats, they are Republicans, and they are our last hope as the front-line fighters against anticompetitive practices, given the absence of Federal enforcement. But if the Supreme Court's misguided decisions of the past decade hamstring those State law enforcement officials and keep them from weighing in on the side of the American consumer, then we will be left in a state of "economic Darwinism," where large, full-price retailers can drive out small, innovative retailers at will.

The House has passed this legislation for the past two congresses, and this year the U.S. Senate for the first time passed a similar measure. It has received tremendous bipartisan support, and I personally want to thank the gentleman from Illinois [Mr. HYDE] for his cosponsorship of the measure in the name of free enterprise.

I ask for the Members' overwhelming support for this effort to prevent the reemergence of price fixing in America.

□ 1130

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

Mr. FISH. Mr. Chairman, I yield 4 minutes to the gentleman from Mississippi [Mr. MONTGOMERY].

Mr. MONTGOMERY. Mr. Chairman, I rise in opposition to H.R. 1470, the Price Fixing Prevention Act. Price fixing is already against the law, and I think current law is adequate. We do not need additional laws to harass private enterprise.

This legislation will change the rules to make it easier for dealers terminated for sound and logical business reasons to bring suit against manufacturers. Some products require a trained sales and service force to make sure the consumer is instructed on how to use the product. If a manufacturer terminates a dealer for failing to follow the service or warranty guidelines, H.R. 1470 could expose the manufacturer to legal action and a charge of price fixing.

A legitimate business decision such as the one I just mentioned is not price fixing. It is quality control. A manufacturer should have the flexibility to terminate a dealer that chooses not to cooperate on these kinds of sales and service activities. The reliability and good name of the product will be in jeopardy if the manufacturer is not allowed to make these business judgments.

The bill does not recognize that there may be valid reasons, besides price, for a manufacturer deciding not to begin a business relationship or to terminate one. Manufacturers should have the right to determine how their products are sold and serviced. These are necessary, non-price-related activities that are essential to maintaining the reputation of the product.

I am also concerned about the effect this bill will have on Mom and Pop stores across the country. It could strengthen the power of the big discount houses. The bill also might force manufacturers to set up their own distribution centers to make sure consumers get the proper sales and service attention. They might choose to avoid dealing with smaller, independent businesses altogether.

One manufacturer in my district said last year, as we were debating this same bill, that he had been able to handle the competition from Japan and Korea by making a better product and selling it at a lower price. But besides the foreign competition, he says, "I also have to fight my own Government because of legislation like this."

Price fixing has been illegal since 1911. Let us continue to enforce current law and not change the rules to allow more unnecessary and unfair lawsuits. Let us preserve the freedom of manufacturers to determine how their products are marketed and serviced.

I urge a "no" vote today on H.R. 1470. Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, this is a very important bill to millions and millions of Americans who have the privilege of shopping at discounters. This is not an abstract legalistic problem involving lawyers trying to decide what specific rules of evidence will apply in antitrust cases, although that is the net impact of it.

But the real issue here is that over the last 15 or 20 years, companies like, and this is not meant to be exclusive, but companies like Burlington Coat Factory, Wal-Mart, Kmart, and hundreds of other discounters have grown up and begun to service tens of millions of Americans with respect to the purchase of many, if not most, goods purchased by those people.

□ 1140

I suspect many of the folks watching today, both in this Chamber and around the country, buy many of their products at discounter operations.

Now, discounting is something which is offensive to other retailers who do not have to discount and in many cases manufacturers worry that discounters may not offer the same levels of quality or the same levels of service, and

that is a justifiable concern; but what this bill attempts to do is to protect the ability of discounters to continue to offer the sales of products at prices that they think best meet the needs of the American people. In many cases, whether it is a television set or whether it is a coat or whether it is a VCR or whether it is any assortment of products that people buy, they like to know that the American competitive system works, and if they want to go to the Burlington Coat Factory, or Wal-Mart's, or Kmart to buy those discounted items, they can.

The essence of the current law makes it more difficult for a discounter to fight the practice that if the manufacturer pulls or jerks the rug out from under him and says, "You can't sell that product anymore because you are underpricing somebody else," it makes it more difficult for that discounter to be able to protect his customers in a court of law.

So my point in addressing the Chamber today is to try and tell my colleagues that this is not a legalistic antitrust issue. This is a very, very practical concern for the millions of Americans who want to fight inflation, who want to fight the recession by being able to go out and have the ability to shop at discounters around this country.

So if you believe that the concept of discounting is worth preserving, in my judgment you should vote for this bill.

Mr. FISH. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. HOUGHTON].

Mr. HOUGHTON. Mr. Chairman, I rise in strong opposition to H.R. 1470, the Price Fixing Prevention Act.

This sounds fair. The words have a ring of truth. It conjures up emotions of protecting the unprotected and sticking it to the dirty and the greedy price gougers of the business community.

But let us take a look at the facts. Price fixing already is illegal, and this adds nothing. The discount stores are doing just great. The manufacturing predators have not laid a glove on them.

Next, the mom and pop stores are being really pushed under. I have a department store in my community that has been in existence for 70 years. At the same time it went under last week, a new discount operation was announced out of town.

This is like defending the money center banks while a small regional bank is going under.

Price fixing is one of the great cancers of a free and a fair market. The problem is as old as time. In fact, it is as old as the law that outlawed it in 1911.

There are the facts, so I urge my associates not to retrace the issues. Let us get on to something which can help the consumer and help the producer of jobs.

This is a fairness issue. It allows a discounter to go into full legal battle when there may be no real justification for the action at all.

In other words, Mr. Chairman, you can presume vertical price fixing, presume it, when it just is not there.

Why are we doing this? Why are we doing it? Sounds like more work for the lawyers at a time when the most important thing is to create jobs in this faltering economy.

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the gentleman from West Virginia [Mr. STAGGERS].

Mr. STAGGERS. Mr. Chairman, I rise in strong support of this proconsumer, procompetitive bill and commend Chairman BROOKS for his leadership in bringing it to the floor today.

This bill will make clear the standards of evidence necessary to establish unlawful vertical price fixing. It would codify the per se rule established by the Supreme Court in 1911 which held that price restraint conspiracies are automatically illegal even if a specific minimum price is not agreed to by the conspirators.

Until recently, the Supreme Court did not require that price fixers actually agree upon specific prices or price levels, so long as the clear purpose of their conspiracy was to suppress price competition. To require that a specific price be agreed upon by the parties involved ignores the variety of indirect and subtle ways in which a retailer can conspire with a manufacturer to suppress price competition.

Vertical price fixing is contrary to our belief in the free market. It causes distortions and creates inefficiencies in the economy. It harms those members of society who can least afford it—the price conscious consumers.

Price fixing costs the consumers of America billions of dollars a year in artificially inflated prices. The impact of price fixing on the millions of Americans who must economize on every purchase they make in the marketplace, particularly as the recession continues, is simply too great for Congress to ignore.

Mr. Chairman, my constituents need this bill. The retailers in Morgantown, WV, should have the freedom to set prices according to the market in their area. Opponents of this legislation would argue that the local retailer should not have this freedom. They would close the courtroom door to local retailers who have been victimized by price-fixing conspiracies. This bill would ensure that efforts by manufacturers to strong arm retailers to raise prices will not be tolerated.

Consumer groups call this bill one of the most important proconsumer pieces of legislation before Congress. It is also supported by the major senior citizens groups, who are concerned over the effect price fixing is having on the millions of senior citizens in this coun-

try who live on fixed incomes and must stretch their dollars just to survive.

Mr. Chairman, I say to my colleagues, we must not allow the term "suggested retail price" to become "mandated retail price."

Mr. FISH. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, as a member of the Subcommittee on Economic and Commercial Law, I have listened to testimony and analyzed the implications of this legislation for the last three Congresses. Because of my concern regarding the bill's likely adverse effects, I have voted "nay" on no less than five different occasions. I remain convinced that this measure—in the form it comes to the floor of this House—would be economically counterproductive for business and for our country.

The language of H.R. 1470 is troublesome and erroneous because it presumes a price-related motive in every dealer termination case. The legal inference or presumption established by this bill assumes that a price-fixing goal was in mind, when the identical facts could lead a reasonable judge or a reasonable juror to conclude otherwise.

Vertical price-fixing conspiracies are per se violations of the Federal antitrust laws and should be punished. That is already the law. But, what the proponents of H.R. 1470 are seeking to do is confuse and obscure the very clear distinction between illegal price-fixing conspiracies and legitimate, lawful business decisions.

H.R. 1470 is a direct attack on the venerable Colgate doctrine of antitrust law and attempts to undermine that landmark Supreme Court ruling, *U.S. v. Colgate*, 250 U.S. 300, 307 (1919). The Colgate decision made it clear that a manufacturer has a lawful, recognized right to decide with whom it will do business. There is nothing in the antitrust laws that interferes with the unilateral right of a manufacturer or wholesaler to select their retail outlets.

Manufacturers have a right to establish quality requirements and service standards for their retail outlets. Manufacturers have a recognized right to establish their own distribution systems and can lawfully terminate poor performing dealers for nonprice reasons. If a dealer does not advertise or promote the product, does not train his sales staff, does not provide adequate repair and warranty services, or does not stay within his assigned territory, then a manufacturer has a right to end that business relationship. As we all know, the sales success of a product depends upon its goodwill—its reputation for quality and reliability—and that, ultimately, depends upon the consumer's impression in the retail marketplace.

Furthermore, section 4 of the bill could be interpreted to partially negate

the 1977 Supreme Court decision in the *GTE-Sylvania* case. See: *Continental TV, Inc. v. GTE-Sylvania, Inc.*, 433 U.S. 36 (1977). That decision, universally followed in the Federal courts, recognizes that nonprice requirements, placed by manufacturers on their retail outlets, are not per se violations of the antitrust laws. Instead, they are judged under the more flexible rule of reason standard.

Later on, when we are in the 5-minute rule, key amendments will be offered by Congressman FISH and Congressman CAMPBELL. The Fish amendment would conform the language of the bill to normal burden of proof requirements in these kinds of antitrust cases. Specifically, the Fish amendment requires proof of a conspiracy between the manufacturer and other dealers and a demonstration that such an agreement caused the plaintiff's termination. The Campbell amendment would exempt businesses without market power from the coverage of H.R. 1470. Both of these amendments are pivotal and should be adopted by this House.

As I have said on numerous occasions, since our subcommittee began consideration of this legislation in April 1987—it seems to me that the large discounters like Kmart, Burlington Coat Factory, Wal-Mart, and others are doing extremely well. The fact is, their sales are climbing each year. Also, the number of discount outlets grows larger every year. It is the small, individual main street retailer that has been in business for many years that is struggling in my region of the country and elsewhere. In fact, many of them have been forced out of business by the success of the discounters.

Congress should not be gerrymandering or micromanaging the antitrust laws so as to favor a particular class of litigants.

□ 1150

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. FEIGHAN].

Mr. FEIGHAN. Mr. Chairman, I thank the chairman for yielding time to me.

Mr. Chairman, I can understand why many of my colleagues might feel lukewarm or indifferent to a bill clarifying antitrust law. But I hope they will take a minute to consider the backdrop against which we are considering H.R. 1470, the Price Fixing Prevention Act of 1991.

As we stand here today in Washington, all is not well in America.

Our Nation is in the grip of a recession that drags on month after month, far too long after some people told us it would end. Twice now, a large majority of this body has tried to effect modest relief for the victims of the recession—the working men and women who fear

that their voices are no longer heard here, that their faces have been forgotten, and that their families are at risk. Twice, we have failed.

Today, we have a chance to send relief to those working men and women without spending a dollar. The Price Fixing Prevention Act of 1991 will extend a helping hand to American consumers—particularly for those Americans who rely on discounts to make ends meet until the next paycheck.

But when a discount store gets cut off by its suppliers, just for charging the lowest price in town, or if the supplier intimidates the discount store into raising its prices—it's unfair, and consumers shouldn't have to stand for it.

H.R. 1470 will protect discount sellers—and therefore consumers—from vertical price fixing. It codifies a long-standing judicial doctrine making vertical price restraints per se illegal. This rule is not new, but codifying it will ensure that courts know that Congress intends a strict interpretation of this doctrine.

H.R. 1470 also clarifies the per se rule, to put courts on notice that prices can be fixed in many ways, not only by mentioning a specific price. No matter how a price is fixed, competition suffers and financially strapped consumers pay.

H.R. 1470 also clarifies exactly what type of evidence is required to get a price-fixing case to a jury. If a discounter can show that he or she was cut off by a wholesaler who is responding to another retailer's complaint, then H.R. 1470 allows the case to go to a jury to determine if the law was violated. Such a rule is essential if we are to ensure that meritorious cases are not dismissed by a judge before a jury can hear them.

I'm happy to see that H.R. 1470 also includes a provision I offered 2 years ago—reaffirming that the intent of Congress is not to preclude summary judgments, but only to ensure that legitimate price-fixing allegations reach a jury for judgment. This amendment was offered as a compromise to Members worried that the evidentiary standard in the bill would open a floodgate of antitrust suits.

I would also like to commend the distinguished chairman of the Judiciary Committee, Mr. BROOKS, for removing maximum price setting from the bill's scope. This exemption does not condone all attempts to set a price cap, it merely allows judges to decide whether or not to apply the per se rule, depending on the facts of the case.

Indeed, there are also cases when maximum prices may actually promote competition. Newspaper publishers, for example, sometimes put a ceiling on what vendors can charge for newspapers in order to increase their circulation. This makes sense for publishers, who can raise advertising rates to

make up for any revenue they lose from lowering their prices. But this maximum price policy is also good public policy: more people read newspapers at a lower cost per paper, and advertisers pay more but get more for their money. But if maximum prices are subject to a per se rule, a judge could be precluded from considering these types of procompetitive effects.

I understand that the Senate's retail price maintenance bill mandates that judges decide maximum price cases under a rule of reason analysis, enabling juries to weigh the procompetitive and anticompetitive effects of the maximum price at issue. I support the Senate's language, and I hope that the chairman will remain openminded about the issue.

Mr. Chairman, antitrust law may seem legalistic or philosophical to some, but what we do today can make a difference to the forgotten Americans—the victims of a recession that is immune to anyone's high poll ratings, the working men and women who rely on discounts to make it to the next paycheck.

Right now, thousands of Americans are watching us on C-SPAN, and millions more are depending on us to protect their rights as consumers and pass H.R. 1470. Without unduly restricting the practicalities of daily business, and without spending a dollar, Congress can provide a weapon to American consumers in their daily struggle to survive an increasingly tough economy.

I urge my colleagues to join with the distinguished chairman of the Judiciary Committee and vote for passage of the most important consumer legislation before us this year.

Mr. FISH. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL of California. Mr. Chairman, today we debate a very complex issue, an issue that concerns Supreme Court opinions of over 80 years of age.

Mr. Chairman, it is important to understand what we are debating and what we are not debating. What we are debating today is whether to reverse a Supreme Court opinion from 1983. We are not today debating the wisdom of a 1911 Supreme Court.

Let me take a moment and give this background: The Sherman Act says that combinations, conspiracies, and agreements in restraint of trade are illegal. The normal concept that we have when we think about this is horizontal agreements, one oil company agreeing with another oil company as to what price to charge for oil.

In 1911, 21 years after the Sherman Act was passed, the Supreme Court had to deal with a question of a different kind of agreement, where a manufacturer says to a distributor, "This is the price at which I want you to sell my particular good."

That distinction has not been maintained in our discussions today or in committee. It seems as though, if we invoke the phrase "price-fixing," we conjure up something that is wrong and something that all of us would condemn, rather than recognize that that phrase is misapplied when we are speaking about a manufacturer's relationship to a distributor as opposed to one oil company agreeing with another oil company.

When the Supreme Court had this issue in 1911, it decided that a manufacturer could not force a distributor to agree on a particular price. But 7 years later, in 1918, the Supreme Court also held that it was entirely appropriate for a manufacturer to choose which distributors that manufacturer wished to deal with, even if the manufacturer wanted to make that distinction on the basis of which retailers would observe a particular price or not.

So a tension was set up: You may not be a manufacturer and force a distributor to abide by a particular price, 1911; but you may, with full right, suggest a price to a distributor and choose which distributors you wish to do business with, 1918.

That is the first confusion that needs clarification in today's debate.

The second is that there is a major difference in the way antitrust law has treated geographical limitations upon the ability of a manufacturer to distribute and restrictions that involve a price.

But it was not always so. The Supreme Court used to say that any agreement between a manufacturer and a distributor would fall under this condemnation. Then in the GTE-Sylvania case, referred to in 1977, the Supreme Court said:

Now, wait a minute; if a manufacturer wants to restrict the territory in which a particular distributor carries on his or her business in order to get better product and better sale, so be it, that could be efficient.

And so the Court recognized a major distinction that has pervaded antitrust law ever since, between distinctions of a vertical nature and a horizontal nature.

Now, why might it be in the interest of the consumer to suggest a price? Why might it be in the interest of the consumer for a manufacturer to choose one particular distributor over another because this distributor happens to abide by a price suggested by a manufacturer?

The answer is that oftentimes, and particularly if you are small, if you are attempting to establish yourself in a market, a niche, you are new, you want to identify your particular product with a quality image. Oftentimes, the price at which you charge is symptomatic of the quality you wish to send to the individual consumer.

□ 1200

An example is Waterford crystal. They wish to send a high quality image, and so they choose retailers who are prepared to select a price that is higher rather than lower. Now that could be troublesome, if the particular manufacturer was a monopolist or dominated the market, but, if the manufacturer is small, it is one way of marketing their good.

Here is another example. I say to my colleagues, "You're a manufacturer of technical stereo equipment, and you believe that you have the best speaker system in the world, and you'd like to have consumers buy that product because it is the top quality speaker. But you're not going to sell it unless they are able to listen to that speaker and determine the quality of that product. So, you say, "I'm going to choose retailers who are going to hire the staff and maintain the quality personnel on hand to demonstrate my product, and I'm going to try to have consumers come in here and listen to my speakers." Now you know what happens. The consumer comes into that high priced, high quality store, listens to the speaker, sees how it works with the turntable, and the modulator, and the AM/FM receiver, and then says, "Oh, I forgot my checkbook. How late are you open tonight? I'll be back." He walks out of the store and goes down to Fast Eddie's, Crazy Eddie's, whatever the name happens to be in your neighborhood, and buys precisely the components of that speaker system that he or she finds out works from the high quality distributor, and in order to prevent that, if you want to market a top quality item with the service demonstration at the moment you buy it, you want to have a distributor there who is prepared to show that product, and you're destroyed, you're destroyed, if the person down the street is going to sell it in a box with no service at all, undercutting every effort by the original person you chose to distribute your products.

Mr. Chairman, the law was in a correct state. It does not need this bill to change it.

The Supreme Court recently had to deal with this case called Monsanto, which really gives rise to our discussion today. In Monsanto the issue was, as it always is in these cases, the decision to terminate a distributor because a manufacturer agreed with some other distributor to cut off this low priced person, which would be illegal, or was the decision of the manufacturer to terminate this distributor because the manufacturer thought that this distributor was not providing the kind of service that the manufacturer wanted?

Now that case would normally be decided in court. In this particular instance the Supreme Court held that, before one could condemn that manufacturer, they have to have evidence

sufficient to exclude the possibility that the manufacturer just decided it on his or her own, which is exactly how it should be. Because, going back to 1918, that manufacturer has the right to select his or her own distributor.

But today's legislation would reverse that. Today's legislation would say that, if one distributor complains about another distributor, then that case must go to the jury. One cannot have it subject to a motion to dismiss, even if there is no other evidence that that one person complained against another. Well, complaints happen all the time, and so today we will be reversing a decision of the Supreme Court, a decision which correctly struck the balance, allowing evidence to be decided by a court, and instead deciding that, if ever there is any complaint, it must go to a jury for final determination even though it is overwhelmingly clear to the court that a manufacturer was simply preserving a quality distributor.

I will conclude with two last observations, Mr. Chairman. First, the Supreme Court case that this bill today reverses was unanimous. It was decided 8 to 0; one Justice did not participate. In that majority was Justice Brennan and Justice Marshall. We are not speaking about a conservative right-wing interpretation. We are talking about a unanimous Supreme Court interpretation including two of the more liberal Justices who have served on this court in the last 50 years.

Mr. Chairman, I will conclude with one other Justice, Oliver Wendell Holmes. In 1911, when the Sherman Act was interpreted to prohibit a manufacturer from agreeing with the distributor as to a price, Oliver Wendell Holmes dissented, and he said words that were true then and equally true now, and with these I conclude:

There is no statute covering the case; there is no body of precedent that by ineluctable logic requires the conclusion to which the court has come. The conclusion is reached by extending a certain conception of public policy to a new sphere. On such matters we are in perilous country. I think that, at least, it is safe to say that the most enlightened judicial policy is to let people manage their own business in their own way, unless the ground for interference is very clear. ***

So also today. Let manufacturers and distributors manage their own business in their own way.

Mr. BROOKS. Mr. Chairman, I yield such time as he may consume to the distinguished majority leader, the gentleman from Missouri [Mr. GEPHARDT].

Mr. GEPHARDT. Mr. Chairman, I rise today in support of the Price Fixing Prevention Act and congratulate Chairman BROOKS on the fine work that he has accomplished.

This is a complicated legal issue that can be summed up in simple English: If you care about the way average working families live, if you care about their family budgets, you must make price fixing illegal.

But if you want to stick up for the big corporations, even if it means making the cost of living rise for average families, vote against the bill.

Retail competition has given working Americans the assurance that they have been getting a square deal since 1911, when Congress first passed legislation to stop unscrupulous merchants from joining conspiratorial agreements with manufacturers against their competitors.

Beginning with the 1980's, Americans no longer had that assurance. In the 1980's decade of greed, Americans understood the old credo of "get-rich-quick" had new respectability.

This administration, and the last one, let the Department of Justice turn a deaf ear to legitimate charges of price fixing and refused to bring a single case in the past 10 years.

And who suffers from such a policy? Working Americans who pay higher prices to clothe their children, and are struggling every day to provide the necessities of life for their families.

Now more than ever, we should be adopting this kind of consumer protection legislation so that meeting the family budget gets a little easier.

You know the numbers—we're in a recession. A lady stopped me in a store a while ago in St. Louis. She said:

Congressman, what's going on here? I got a job and my husband has a job. We work hard every day for our kids. We can't afford to buy a new car. We can't afford our house payments. When are you guys in Washington going to start fighting for me?

Today would be a good day to start on an issue that sounds complicated but can be reduced to dollars and cents in the pockets of our constituents. Preventing resale price maintenance is about the simple concept of the consumer benefiting from open competition at the cash register.

We owe it to the American people to preserve the principles of free competition in the marketplace. I urge my colleagues to support the chairman and give the American people a fair deal.

Mr. FISH. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I am very pleased to support this excellent bill, and I congratulate the gentleman from Texas for bringing it forward.

Vigorous competition on the basis of price saves consumers billions of dollars a year and is a cornerstone of our free enterprise system. Congress recognized this when it repealed the Federal authority for State fair trade laws in 1975. The passage of H.R. 1470 will serve notice that the House of Representatives still believes it.

The Supreme Court's Monsanto and Sharp decisions in the 1980's significantly raised the burden of proof faced by discounters challenging supply cut-offs by manufacturers conspiring with competing dealers to maintain high

unchallenged retail prices. Discounters no longer have a fighting chance of winning antitrust actions, and manufacturers have become greatly emboldened in threatening terminations of supply. Unfortunately, examples are endless. A clothing manufacturer terminated its relationship with a discount chain because of pressure from a department store. A book publisher terminated a discount bookseller because of complaints by trade associations. A general merchandise discounter was threatened with a supply cutoff by appliance, computer, and toy manufacturers if it refused to increase catalog prices.

To combat these abuses, H.R. 1470 would codify the 80-year-old rule that vertical price fixing is per se illegal and would modify or overrule Monsanto and Sharp to the extent necessary to establish uniform and fair evidentiary standards in dealer termination cases. The other body has already passed such a bill. Let us acknowledge the good sense in this move, as we did just 1 year ago. By passing H.R. 1470 without any weakening amendments, we will declare that price fixing is not to be tolerated under any circumstances in America and we will be one step closer to winning a major victory for the consumers in our districts.

□ 1210

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from California [Mr. EDWARDS], chairman of a great subcommittee of this Committee on the Judiciary.

Mr. EDWARDS of California. Mr. Chairman, I thank the gentleman from Texas [Mr. BROOKS], the chairman of our committee, for yielding time to me, and he is to be complimented on guiding this bill through the full Committee on the Judiciary. It is a good bill, and it should be enacted. As our good friend, the gentleman from Illinois [Mr. HYDE], said, it should be enacted without any amendments because the amendments that are going to be offered are weakening amendments that would take the heart out of the bill.

Mr. Chairman, I wish to express my strong support for H.R. 1470, the Price Fixing Prevention Act of 1991. I also want to commend my chairman, JACK BROOKS, for his leadership in guiding this much-needed bill through the Judiciary Committee and onto the House floor.

Mr. Chairman, over the past 10 years, the Reagan and Bush administrations have failed to bring even a single case against the practice of resale price maintenance. Moreover, recent Supreme Court decisions have made it extremely difficult for a discount retailer to bring its own price-fixing action. As a result, suppliers and retailers have been free to carry out their own price-

fixing schemes with little fear of prosecution, leaving the consumer to pay the inflated prices resulting from this practice.

H.R. 1470 puts the teeth back into our price-fixing laws. It reaffirms that minimum price fixing is a per se violation of the antitrust laws. The bill also clarifies the evidentiary standard so that discounters will have a realistic chance of getting their cases to a jury.

Mr. Chairman, I am also pleased that H.R. 1470 draws an important distinction between maximum and minimum resale price maintenance. Suppliers often require a wholesaler or retailer to pass along their goods below a certain price. This pricing strategy, which a supplier pursues in order to increase its retail sales volume, can also benefit the consumers who are able to buy at the discount price. As long as a maximum retail price maintenance scheme is pursued for pro-competitive purposes, it should not be subject to the per se requirement contained in H.R. 1470. It is fitting that the bill specifically exempts maximum retail price maintenance agreements from its coverage.

Mr. Chairman, the heart of our free market system lies in competition aimed at giving the consumer the benefit of the lowest price. H.R. 1470 will reaffirm our Government's commitment to insuring that prices are set based on competition and not through anti-competitive conspiracies between suppliers and retailers. I urge my colleagues to support the bill.

Mr. BROOKS. Mr. Chairman, I want to thank the gentleman from California [Mr. EDWARDS] for his support for this important legislation, and I would like to say that the gentleman is right on target in his description of the distinction drawn in the bill between maximum and minimum retail price maintenance.

Mr. EDWARDS of California. Mr. Chairman, I thank the chairman of the committee for his observations on that particular part of the bill.

The CHAIRMAN. The Chair will state that the gentleman from New York [Mr. FISH] has 7 minutes remaining, and the gentleman from Texas [Mr. BROOKS] has 11 minutes remaining.

Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Rhode Island [Mr. REED].

Mr. REED. Mr. Chairman, I thank the chairman of the committee, the gentleman from Texas [Mr. BROOKS] for yielding me this time, and I want to commend him for his efforts on this important piece of legislation.

Mr. Chairman, vertical price fixing costs consumers billions of dollars a year, and the motivating factor in this legislation is to save dollars for consumers. In these difficult economic times that is one of the most important missions we have here in the U.S. Congress.

The effects of this bill will be felt by all those people throughout the United States who will be able to get products at cheaper prices, who will be able to reap the benefits of a truly competitive economic market.

Consumers deserve to have this benefit. They deserve to have the ability to shop around and find the lowest prices and buy at those lowest prices.

This principle that vertical price-fixing is per se illegal was established in 1911. Recent Supreme Court cases, however, have drastically reduced the practical effect of this long-term ruling of the U.S. Supreme Court. The Monsanto case and the Sharp case taken together virtually provide that an individual must prove a specific price was fixed to prevail, and that is not going to happen. What is going to happen, though, is that those aggressive businesses, particularly small businesses that want to go out and compete in the market and want to observe the traditional laws of supply and demand and come up with lower prices, will be quickly shutoff from supplies, and the effect will be that consumers cannot reap the rewards in a truly competitive market.

H.R. 1470 will redress that imbalance. It will restore the law to a position in which consumers benefit from the law and are not punished by it. Ultimately, today's actions are an index of how we feel about competition. If we believe competition truly should be the rule of our marketplace, then we will support H.R. 1470, which will make vertical price-fixing per se illegal. If we do not have faith in competition, if we believe that big companies should still be able to operate without the threat of antitrust suits for vertical price-fixing, then we will not support H.R. 1470.

Today, Mr. Chairman, I propose that we vote for consumers, that we vote for competition, and that we vote for H.R. 1470.

Mr. FISH. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this debate demonstrates that clever labels are one thing—but its what's inside the package that really counts. The title of this legislative package is, in short, a misnomer.

I say this because no one believes or argues that manufacturers and retailers should be allowed to conspire and fix prices. Price fixing—both vertical and horizontal—is per se illegal right now. In fact, vertical price fixing has been illegal since 1911. We don't need a new statute to tell us what is already the law.

Instead, H.R. 1470 would invent anti-competitive conspiracies out of innocent and lawful business decisions. What H.R. 1470 is really about is altering evidentiary requirements in certain complicated antitrust cases—those in which it is alleged that a dealer's termination by a manufacturer occurred

in furtherance of a resale price maintenance scheme. The legislation would create an inference (or legal presumption) that a price fixing conspiracy occurred when, in fact, no such conspiracy may ever have taken place. As drafted, H.R. 1470 could easily result in courts and juries misinterpreting and treating many innocent and completely lawful business decisions as vertical price fixing conspiracies.

Mr. Chairman, I ask the question, what would be the results of this legislation?

The bill will inhibit manufacturers from terminating dealers who provide inadequate service or otherwise violate the terms of their contracts. Small independent dealers are also likely to suffer under this legislation, because manufacturers would have an incentive to open up their own distribution centers to ensure that adequate services are offered along with their product. Manufacturers are rightly concerned about the reputation and goodwill surrounding their products. Make no mistake about it, product reputations are made in the retail marketplace.

Unfortunately, the bill asks Congress to pick sides in antitrust litigation. It will unfairly tilt proceedings in favor of a plaintiff—that is a discontinued dealer—merely upon the dealer's allegation of an antitrust violation. The unilateral decision of a manufacturer to select its own retail outlets is currently protected by the antitrust laws and has been since 1919. *U.S. v. Colgate*, 250 U.S. 300, 307 (1919). But certain advocates of H.R. 1470 intend to change that situation by essentially overruling portions of the Colgate doctrine. What some proponents want from this legislation is to use the antitrust laws to gain more economic and legal leverage so that they can force a manufacturer to sell his products to them.

Contrary to what has been said in this debate, this bill will not help consumers. In fact, in significant ways, it is anticonsumer. For example, it could very well harm purchasers of products that require special servicing and marketing. If it is enacted, buyers can expect to receive less warranty protection and less repair service than is now the case. If you are purchasing a personal computer, a VCR, or a camera, warranty protecting a personal computer, a VCR, or a camera, warranty and repair service is a vital element of that purchase. This legislation could undermine the incentive to provide those additional services with these types of technical and complicated products.

Mr. Chairman, if the current legal climate is so negative for discount stores, then why are the discount stores doing so well? Article after article in national magazines note that the discount stores are thriving—and document the obvious fact that discounters are continually taking market share

away from the downtown department stores and the traditional main street retail outlets. If the current law is such a problem, why are they thriving?

Some would have us believe that a vote for this bill is a vote for discount prices. This is not only inaccurate—it is a ludicrous way to argue for a new antitrust law. In reality, this bill is about giving one side an advantage in litigation. It unfairly presumes a vertical price fixing conspiracy has occurred in every instance where a retail dealer is terminated by his manufacturer-supplier. Such a presumption defies everyday business reality and common sense. The bottom line is that this bill will cost us more money—both as taxpayers and consumers.

This legislation means more lawsuits and more cases going to trial. I regret to advise my colleagues that this bill is intended to have that very effect. Antitrust litigation is by its very nature lengthy and time-consuming. Typically, these cases take years to resolve. What the advocates of H.R. 1470 know, is that if these weak cases get by preliminary motions for early dismissals—that is, motions for summary judgment—then the timeframe itself will force manufacturers to agree to a money settlement. Meanwhile the backlog of civil cases in our Federal courts continues to mount and worsen.

The legislation is opposed by the Department of Justice and the Federal Trade Commission. If it reaches the President's desk in its current form, a veto of H.R. 1470 will be recommended by his senior advisers. Further, it is opposed by a variety of manufacturing and various business trade associations including the Chamber of Commerce, the National Association of Manufacturers, the NFIB, the Business Roundtable, the Computer and Business Manufacturers Association, as well as a number of retail groups. In addition, it is opposed by the highly respected American Bar Association and the antitrust section of the city bar of New York. I think it is particularly noteworthy that these two organizations are unequivocally opposed to H.R. 1470—because they are the most qualified to understand its real consequences.

Later in the debate, Mr. Chairman, I shall introduce letters for the Attorney General.

The Federal Trade Commission is in opposition to H.R. 1470.

Perhaps the best way to demonstrate the practical unfairness of this legislation is to refer to a letter I received from a small manufacturer in Tennessee. He writes: "It is difficult to understand why a manufacturer should be forced to sell to any retailer who wants his product, while the retailers have no obligation to buy from the manufacturer." We can quote all the antitrust jargon and case law we want on both sides of this issue. But the fairness

question posed by that small Tennessee manufacturer is the one that Congress really ought to consider.

If H.R. 1470 as reported by the House Judiciary Committee is enacted into law, then Congress will have created a legal situation that will result in serious and costly harm to thousands of businesses—manufacturers and retailers—all across this country. The bill would establish a statutory presumption of unlawful price fixing and, as a result, weaken evidentiary standards in complex antitrust cases dealing with resale price maintenance. The bill would encourage plaintiffs to bring antitrust suits that would not be filed today.

This bill is identical to legislation that—when it was considered on this floor last year—received "nay" votes from 157 Members of this House. This legislation again is a likely target for a Presidential veto. It means more litigation and more big dollar settlements. It will not keep prices low. In fact, quite the opposite will happen. In my view it is unwarranted, ill-advised, and unfair. If amendments to be offered later by myself and the gentleman from California [Mr. CAMPBELL] are not adopted, I urge my colleagues to oppose this legislation.

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Mr. BROOKS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Maryland [Mrs. BENTLEY].

Mrs. BENTLEY. Mr. Chairman, it has been a source of great disappointment to me that as we have watched the sale of many of our major assets—Columbia Pictures, MCA, and now, possibly, Time Warner to Japanese interests that no public action has been taken on the part of the Justice Department or the Federal Trade Commission, to even question the antitrust implications of these actions.

Therefore, I am not surprised that Chairman BROOKS and Congressman HYDE—two of the most respected of the constitutionalists in Washington—feel so strongly that certain provisions of Sherman Antitrust need to be reasserted by the Congress in this legislation.

The very existence of strong antitrust legislation going back to the turn of the century speaks to the never changing temptation of producers to control their markets. At the time of the original Sherman Antitrust, the action grew out of practices developed through our own industries.

Now, however, in the U.S. marketplace—which is growing ever more international—this action is necessary to counter foreign marketing practices which in many instances are not illegal in other nations. The nation most noted for vertically integrated corporations is Japan. Its keiretsu system offers classic examples of not only vertical integration, but in many instances—horizontal integration.

It is fine for Japan. It, seemingly, has worked very well for Japanese business interests, but—the Japanese consumer has been notoriously shortchanged in the process.

I think it appropriate—and timely—to reassert U.S. law and practices with this new legislation. It is impressive to me that attorneys general of 48 States support this law. These are the people who are on the front line. These are the officials charged with upholding the Federal law in the States, in absence of appropriate Federal action and, it is obvious, that they are asking for our help.

Let's give it to them today. Let us pass H.R. 1470.

Mr. GILMAN. Mr. Chairman, I am pleased to rise in support of H.R. 1470, the Price Fixing Prevention Act, which would adjust the antitrust laws so as to make them more consistent with their purpose, and with judicial interpretations as well as congressional intent. I would also like to commend the distinguished chairman of the Judiciary Committee, the gentleman from Texas [Mr. BROOKS], and the distinguished gentleman from Illinois [Mr. HYDE] for their efforts in bringing this measure to the floor.

Mr. Chairman, price competition is the lifeblood of our economy. It is hard to imagine a better way for a new, struggling company to enter the market than to engage in competitive pricing. Moreover, our Nation's consumers should be able to obtain the best price available.

This bill, which removes any doubt that vertical price fixing is a per se violation of the antitrust laws, would safeguard price competition throughout the Nation.

There is no basis for the major criticism against this measure, which is that price fixing is necessary in order to ensure that retailers will provide all the services that the manufacturer desires; such as attractive showrooms and personal customer service. In 1977, the U.S. Supreme Court ruled that a manufacturer could require retailers and distributors to provide every service it desired to be associated with its goods, but it could not dictate the retailer's prices.

Any retailer who fails to follow the manufacturer's wishes regarding the distribution of its merchandise can still be cut off whenever the manufacturer so desires; H.R. 1470 does not affect a manufacturer's right to terminate distribution under these circumstances.

Mr. Chairman, I strongly urge my colleagues to vote in favor of this measure, which preserves the very basic goals of our market economy: that supply and demand will dictate prices and that competitive pricing will lead to the least waste for manufacturers and the best buy for consumers.

Mr. ATKINS. Mr. Chairman, I rise today in support of H.R. 1470, the Price Fixing Prevention Act of 1991. This bill will overturn a Supreme Court decision which modified the rule that agreements between suppliers and dealers to maintain a preset price is automatically illegal.

H.R. 1470 is critically needed to protect both consumers and competitive retailers against a practice known as vertical price fixing. Such a

conspiracy typically occurs when a full-price retailer complains to a manufacturer about a discount retailer's competitive pricing. The threats from a full-price retailer generally involve a refusal to sell the manufacturer's products unless the manufacturer cuts off the discounter. As a result of such a conspiracy, shoppers are forced to pay inflated prices, and retailers are deprived of their freedom to compete.

Mr. Chairman, in an editorial in favor of H.R. 1470, the Boston Globe stated that "free enterprise is a constant war between the desire to maximize profits and the desire to maximize sales through various incentives," including price. The Globe then went on to say that free competition cannot exist if manufacturers and their retail distributors are protected from price cutting by competing retailers. This is exactly what H.R. 1470 seeks to prevent.

This bill, however, does not create new law. Rather, it reaffirms and clarifies existing law in light of two Supreme Court decisions. In the 1984 Monsanto decision, the Supreme Court made statements interpreted by lower courts to mean that in order for the terminated discounter to have its day in court, it had to furnish evidence not only proving its own case but also disproving the manufacturer's justification for terminating the discount retailer. In short, the Monsanto decision placed a virtually impossible burden on discounters to get to trial.

In the 1988 Sharp decision, the Supreme Court held that there was no violation of the law unless the manufacturer and the retailer had agreed to set a specific price as part of their conspiracy. Since conspirators are smart enough not to engage in such simplistic practices, the effect of the Sharp decision has also been to create an insurmountable burden on discounters.

H.R. 1470 is a proconsumer measure. The bottom line for my support of this bill is because the present economic uncertainty in the State of Massachusetts has made it particularly important to protect consumers and value-oriented retailers in addition to keeping prices low. Price competition is the most prominent feature of modern retailing and should be preserved. That is why I am a cosponsor of H.R. 1470. I urge my colleagues to join me in passing this important proconsumer legislation intact.

Ms. PELOSI. Mr. Chairman, I rise today in support of H.R. 1470, the Price Fixing Prevention Act. As a strong advocate of proconsumer initiatives, I am pleased to be a cosponsor of this important bill which will restore to American consumers and competitive retailers essential protection against a form of price fixing known as resale price maintenance [RPM].

RPM conspiracies often begin when a full-price retailer complains to a manufacturer about a discount retailer's competitive pricing and threatens to stop selling the manufacturer's products unless the manufacturer stops supplying the discounter. If the manufacturer cooperates, consumers are victimized by artificially created inflation.

For a decade, our colleagues here in Congress have been working to craft a careful bill to address this problem. I would like to commend Chairman BROOKS and Mr. HYDE for their efforts and their success in bringing H.R. 1470 to the floor for consideration.

Consumers depend on price competition to create bargains. When RPM occurs, consumers are forced to pay a kind of price fixing premium on goods in almost every area of the retail market, including children's clothing, furniture, and sporting goods.

We will hear today from opponents of this bill that higher prices are good for consumers because they ensure a higher level of service. But, many consumers want the right to choose low prices because they need low prices.

If a manufacturer wants to ensure that a certain level of service is provided with a product, he or she can take other actions which do not penalize consumers. Including the requirement for a certain level of service in a contract for the purchase of goods is more efficient, and fairer, than fixing an artificially higher price and hoping that the added income goes to service, not to profit margins.

H.R. 1470 is an important piece of proconsumer legislation which protects price competition and ensures that manufacturers cannot be strong-armed by high-price retailers into cutting off valued customers.

I urge my colleagues to support this bill and to oppose all weakening amendments.

Mr. SYNAR. Mr. Chairman, price fixing, or resale price maintenance always has been considered to be anticompetitive in the American marketplace. Pressure brought by a manufacturer against a retailer to sell at a nondiscount rate cannot be permitted. Such activity is—plain and simple—an antitrust violation.

H.R. 1470 makes it clear that practices that lead to the termination of a retailer for offering discount prices will be able to be reviewed in court. The bill sets up new evidentiary standards that ensures that cases are not prematurely dismissed.

This is not a new issue. Congress has made it clear before that it does not approve of resale price fixing. In 1976 it repealed a law which permitted States to allow price fixing within their borders. Until the Reagan administration, retail price fixing was investigated and cases were brought against manufacturers by the Justice Department.

At some point competition and the consumer became casualties of the administration's attitude. We need to ensure that competition continues to thrive. That is the only way that we serve both business and the consumer.

Mr. GOODLING. Mr. Chairman, I rise in support of H.R. 1470, the Price Fixing Prevention Act of 1991. I want to congratulate Chairman BROOKS and Congressman HYDE and others for their time and effort in fashioning this legislation which rededicates the Federal Government to its longstanding opposition to resale price maintenance.

Resale price maintenance in its unvarnished form, is nothing more than price fixing and comes about when a manufacturer requires its distributors to agree to charge certain prices for goods or services and thereby eliminates price competition to the ultimate consumer.

As early as 1911, the Supreme Court struck down such a scheme as illegal "per se" in Dr. Miles Medical Company versus John Park and Sons. Justice Charles Evans Hughes concluded in that decision:

The complainant having sold its products at prices satisfactory to itself, the public is

entitled to whatever advantage may be derived from competition in the subsequent traffic.

This simple and effective rule has served us well for over three-quarters of a century, and today we are merely reaffirming it.

The bill before us codifies this rule and clarifies some evidentiary ambiguities that have arisen since recent Court decisions in the Monsanto and Sharp decisions.

There is concern that the bill could result in juries misinterpreting the treating many innocent and completely lawful business practices as vertical price fixing. However, the legislation makes it clear that the plaintiff must prove there was a communication from a competitor of the claimant to the supplier regarding price competition and in response to the communication the claimant was terminated.

While I would support additional amendments to address some of the other concerns of the business community, I am pleased with this particular legislation of what I consider a proconsumer and probusiness bill.

I urge my colleagues to join me in supporting H.R. 1470.

Mr. ANNUNZIO. Mr. Chairman, I rise in support of H.R. 1470, the Price Fixing Prevention Act of 1991. This bill, which I have cosponsored, would codify a portion of a 1911 Supreme Court ruling that said it was illegal for manufacturers and retailers to conspire to fix the prices consumers pay.

Most businesses have accepted this principle for decades, but in the 1980's price-fixing schemes proliferated amid lax enforcement by the Justice Department and two Supreme Court rulings that made it harder to prove price fixing.

In recent years, many discount stores have fallen victim to formal or informal price-fixing schemes designed to hike the profits of selected manufacturers and retailers. Businesses which sell items below these fixed prices often find that manufacturers will no longer provide them with merchandise.

Mr. Chairman, the practice of price fixing is a consumer ripoff. One estimate has placed the yearly cost to consumers at \$23 billion. That is intolerable, especially during a recession that has left nearly 8 million Americans jobless.

H.R. 1470 will help curb this crime against consumers by enabling judges to decide when charges of price fixing merit a jury trial. This bill will encourage businesses to compete solely on the basis of price, quality, and service. I urge my colleagues to support H.R. 1470.

Mr. RICHARDSON. I rise today to express my strong support for the Price Fixing Prevention Act of 1991. This legislation seeks to eliminate retail price fixing which has plagued the American consumer for the past decade.

Despite legislation passed by Congress during the seventies prohibiting price fixing laws, the Supreme Court and the Justice Department have recently indicated that the practice of retail price fixing is permissible. But I, along with many of my colleagues, disagree.

H.R. 1470 reasserts the right of discounters to offer name brand products at a cut rate price and the right of consumers to choose from a variety of retailers. In a time of recession, this is particularly important. Consumers,

with mortgages, college tuitions, and other payments looming overhead, cannot afford to be further burdened by the demands of higher priced retailers. In the State of New Mexico, many people on low or fixed income rely heavily on discount retailers for such essentials as clothing, furniture, and appliances. It is unfair for higher priced retailers to force consumers to pay for frills they do not want.

This legislation seeks to revitalize healthy competition between retailers. While we seek to open free markets across the globe, it is ironic that retail price fixing has been tolerated during the past decade in our own country. Retail price fixing must be eliminated in our own economy to encourage competitive practices at home and abroad.

Finally, this legislation has been carefully crafted to maintain the rights of suppliers. Suppliers will continue to be able to pick and choose their retailers and arbitrate the terms of their contracts to demand the conditions under which their product will be sold.

I feel that this legislation will be tremendously beneficial to consumers, discount retailers and the economy as a whole. I am proud to lend my support to this important legislation and I urge my colleagues to do the same.

Mr. CONYERS. Mr. Chairman, we have before us today a piece of legislation addressing vertical restraints under the Sherman Act. This legislation is made necessary by the neglect of the Justice Department under both the Reagan and Bush administrations. With no enforcement of price-fixing prohibitions, manufacturers have been permitted to bypass the law and set artificially high prices for consumer goods.

Although resale price maintenance has been illegal for many years, the increasingly conservative Supreme Court has chipped away at the Sherman Act by redefining some of the key elements of price-fixing cases. Historically, it was possible to prove a price-fixing conspiracy with evidence of communications regarding price competition, and subsequent contract termination and refusal to supply; however, in the *Monsanto* ruling, the Supreme Court decided that "something more" is needed. This current price-fixing legislation before us is needed to clarify the evidentiary burden on the claimant. In the other damaging precedent, the *Sharp* decision, the Supreme Court narrowed the definition of "price" to be a specific dollar amount or price level—clearly, this allows manufacturers to bypass the intent of the law by utilizing euphemistic industry terms and various price formulas. The result of the combined damage wrought by these decisions, is that the manufacturing industry has had carte blanche in setting and maintaining artificially high resale prices.

These Supreme Court cases, combined with a lackadaisical Justice Department seemingly uninterested in enforcing the antitrust laws, have had a disturbing effect. In the past 10 years, as the burden on plaintiffs has continuously increased, we have seen the number of private claimants plummet. One can conclude that the judicial balance has been tipped so far in favor of big business, that the victims of price fixing would rather comply with the financial demands than go to Court. This imbalance not only victimizes those retailers and distributors with legitimate claims, it also victimizes

the American consumers by forcing them to pay artificially high prices for products.

The Price Fixing Act of 1991 will eliminate many of these problems. It clearly reestablishes the elements of price-fixing cases as intended by the Sherman Act. If there is sufficient evidence that one party has tried to control price competition of certain products by communicating with other parties, and those particular communications have led to contract terminations and refusals to supply to other market participants, then a Court can properly infer an antitrust violation. This bill also clarifies the definition of "price" in price-fixing cases. Since few manufacturers would be foolish enough to blatantly violate the law by setting an actual dollar amount, this legislation recognizes that manufacturers may not bypass the law by using formulas, industry terms, or other devices to set, change, or maintain prices. Quite simply, everyone, at every stage from manufacturer to retailer, should be free to provide goods and services at the best possible price they can.

In each of the past 5 years, legislation similar to that in front of the committee today has been effectively stopped by succeeding administrations unwilling to put the reins on big business. And in each of the past 5 years American consumers have been left with the nagging feeling that they are being duped into paying more for products than they should. Once again, this administration has the opportunity to support and enforce our antitrust laws. I invite President Bush to stand with us in doing something positive for our economy, something fair for all businesses, something right for all Americans.

Mr. SMITH of New Jersey. Mr. Chairman, I rise today to urge my House colleagues to support the passage of H.R. 1470, the Price Fixing Prevention Act of 1991.

As our Nation's economy struggles to return to economic growth, American consumers are frequently turning to discount merchandisers to find the products they need at prices which fit their budgets. Pending on the floor today is a piece of legislation which will offer consumers real protection against anticompetitive practices—such as vertical price fixing—which hamper the ability of discounters to provide goods at attractive prices.

Basically, vertical price fixing occurs when a manufacturer dictates the price a retailer may charge when marketing the manufacturer's goods. While the manufacturer considers this situation a resale price maintenance agreement, I consider the practice a restraint of trade. I believe that if the retailer purchases the goods from the manufacturer, the retailer and the free market should determine the price offered to the consuming public.

Nevertheless, Mr. Chairman, H.R. 1470 was drafted to address a far more ominous situation. Some full price retailers refuse to compete with discounters and complain to the manufacturers who supply both with products. In some circumstances, the full price retailer may be powerful enough economically to convince the manufacturer to drop the uncooperative discount retailer and stop supplying the products. This form of economic conspiracy leads to discounter termination and higher prices for the consumer.

This is not a distant economic or legal theory, it has indeed occurred in my home State

of New Jersey. A major department store demanded that a manufacturer halt the delivery of a product to a discounter who was underpricing the department store. The manufacturer—fearing the loss of this nationwide department store as a customer—dropped the discounter and refused to supply it with their products. Likewise, the discounter—fearing the loss of the manufacturers' goods in all of its stores—complied with the demand and stopped selling those goods which undercut the department store.

Unfortunately, during the 1980's, two Supreme Court decisions made it very difficult for a retailer to bring suit against a manufacturer alleging any illegality under current anti-trust laws. The *Monsanto* and the *Sharp Electronics* cases created special loopholes which enhanced the ability of manufacturers to set retail prices. Mr. Chairman, the House must pass H.R. 1470 to overturn these two Supreme Court decisions so that new evidentiary standards can be used to end vertical price fixing.

Respected organizations such as the National Association of Attorneys General and Consumer Union fully agree with this effort and support the enactment of H.R. 1470. I urge my colleagues to examine the facts in this matter and vote in favor of this proconsumer, procompetition legislation.

Mr. SMITH of Florida. Mr. Chairman, it is important to remember why we are considering H.R. 1470, the Price Fixing Prevention Act.

Congress enacted antitrust laws to help the consumer by protecting competition and preventing monopoly. Congress and the Supreme Court have determined that fixing prices artificially is illegal. One way manufacturers and retailers fix prices is through vertical price fixing, or resale price maintenance—requiring a minimum selling price by the retailer.

In 1911, the Supreme Court ruled against this practice. In 1975, Congress adopted legislation that ended the antitrust exemption for State so-called fair trade laws, laws that permitted minimum selling prices. That should have put an end to the problem.

Yet, price fixing continues in at least one pernicious way.

In recent years, the Supreme Court has issued several rulings that have made it almost impossible for an adversely affected company to obtain relief from companies engaging in price fixing. The Court's decisions generally allow the alleged price fixer to obtain summary relief before all evidence has been presented to the court.

If a company wishes to have a price-fixing case heard in court, it must meet two criteria. The aggrieved company has to prove that it has not engaged in any improper activities and that the price fixers agreed to set a specific price. The latter, I contend, is an almost impossible standard to meet. Only fools fix prices before witnesses.

If a case does make it past this preliminary stage, the plaintiff company still has to prove its case. But, given the law today, the chances are that these cases will not get this far.

Consequently, price-fixing cases are becoming more and more difficult to prove, not because a price-fixing conspiracy did not occur but rather because the hurt party cannot present its complete case in court.

As I did in 1990, I want to present an example of the problem:

I want to talk about Xanadu Electronics, which sells to both Overpriced Ltd. and Too Cheap, Inc. Too Cheap is a discount retailer that makes money, even though its prices are less than those charged by the multi-product-selling Overpriced chain.

One day, an Overpriced VP tells a Xanadu executive that Too Cheap is murdering Overpriced in a few markets. A moment or two later, the Overpriced VP mentions that he might have to reduce the amount of space provided for Xanadu products in Overpriced stores nationwide. A few days later, Xanadu cuts off Too Cheap.

Now, Mr. Chairman, a rational person might reach two conclusions from this scenario: First, Xanadu's action bore no relation to the conversation that occurred between Xanadu and Overpriced; or second, Xanadu cut off Too Cheap to assuage Overpriced and to keep Overpriced business.

Without more evidence, even I cannot tell you exactly what occurred. And that is precisely the problem that H.R. 1470 seeks to overcome.

Under current law, no judge or jury would hear any additional evidence to decide whether an illegal price-fixing conspiracy occurred. If they applied the Court's decisions, the courts in all probability would be required to toss out Too Cheap's suit against Overpriced and Xanadu in a preliminary stage of judicial proceedings.

The question that each Member must decide today is how to best protect the ability of consumers to obtain the goods they need at prices they can afford.

Current law restrains discount sellers and protects high-priced competitors. If there exists evidence that could support a conclusion that Xanadu and Overpriced conspired to fix prices, then the trier of fact should reach that conclusion after all evidence has been presented and rebutted.

H.R. 1470 levels the playing field. It does not change any underlying antitrust law. Remember, the discounter still must prove an antitrust case. H.R. 1470 merely eliminates a procedural obstacle that has assisted those who artificially raise the price of consumer goods.

Let me make one final point: Vertical price fixing means fewer discount retailers; fewer discounters mean fewer options for consumers; fewer options means fewer goods will be sold; fewer goods sold—and manufactured—mean fewer jobs for Americans.

I urge my colleagues to support the working men and women who already must scrimp and save for every bargain. During a recession, consumer spending is reduced significantly or else confined to lower priced items. If the merchandise of discount retailers can be eliminated by a price-fixing conspiracy, then even less money will be spent on consumer items. Less consumer spending means a slower recovery. Consequently, opposition to the committee's bill is opposition to economic growth.

We must pass H.R. 1470.

Mr. BROOKS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. All time has expired for general debate.

Pursuant to the rule, the bill shall be considered under the 5-minute rule by sections, and each section is considered as read.

The Clerk will designate section 1.

The text of section 1 is as follows:

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 "Price Fixing Prevention Act of 1991".

The CHAIRMAN. Are there any amendments to section 1?

The Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. EVIDENTIARY STANDARDS IN FEDERAL CIVIL ANTITRUST ACTIONS RELATING TO PRICE FIXING.

(a) In any civil action based on a claim arising under section 1 or 3 of the Sherman Act (15 U.S.C. 1, 3), and alleging a contract, combination, or conspiracy to set, change, or maintain prices (other than a maximum price), evidence that a person who sells a good or service to the claimant for resale—

(1) received from a competitor of the claimant a communication regarding price competition by the claimant in the resale of a good or service, and

(2) in response to such communication terminated the claimant as a buyer of a good or service for resale, or refused to supply to the claimant some or all of such goods or services requested by the claimant,

shall be sufficient to raise the inference that such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section. For purposes of this subsection, a termination or a refusal to supply is in response to a communication if such communication is a substantial contributing cause of such termination or refusal to supply. Nothing herein shall preclude the court from entering judgment in favor of the defendant, at trial or prior thereto, if the court determines on the basis of all the evidence and pleadings submitted by the parties, in accordance with the Federal Rules of Civil Procedure and the requirements of this subsection, that no such inference of concerted action can reasonably be drawn by a trier of fact.

(b) In any civil action based on a claim arising under section 1 or 3 of the Sherman Act (15 U.S.C. 1, 3), and alleging a contract, combination, or conspiracy to set, change, or maintain prices, the fact that the seller of a good or service and the purchaser of such good or service entered into an agreement to set, change, or maintain the price (other than a maximum price) of such good or service for resale shall be sufficient to constitute a violation of such section. An agreement between the seller of a good or service and the purchaser of such good or service to terminate another purchaser as a dealer or to refuse to supply such other purchaser because of that purchaser's pricing policies shall constitute a violation of such section, whether or not a specific price or price level is agreed upon.

The CHAIRMAN. Are there any amendments to section 2?

AMENDMENT OFFERED BY MR. FISH

Mr. FISH. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FISH: On page 2, line 15, strike "price competition" and insert in lieu thereof "the price or prices charged".

On page 2, line 16, insert "requested termination of the claimant" after the comma and before "and".

On page 2, line 17, strike "in response to" and insert in lieu thereof "because of and in agreement with".

On page 3, line 7, strike "in response to" and insert in lieu thereof "because of and in agreement with".

On page 3, lines 8-9, strike "a substantial contributing" and insert in lieu thereof "the major".

Mr. FISH (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. FISH. Mr. Chairman, this amendment would revise and clarify the language in section 2(a) of H.R. 1470, dealing with the Supreme Court decision in *Monsanto Co. versus Spray-Rite Corporation*.

My continuing concern is that the language in H.R. 1470 is overly broad and ambiguous. It would create potential treble damage liability in situations that do not, in fact, involve anti-competitive activities. A manufacturer can have valid reasons for terminating a retail dealer—reasons that have nothing to do with the retail price of the product. For example a retail outlet may be terminated for not advertising a product as agreed upon; for failure to provide adequate repair or warranty service; for failure to hire trained sales or service personnel; for failure to properly display the products of the manufacturer; or simply because its sales are poor. All of these are lawful and legitimate nonprice reasons. Terminations based upon such reasons do not violate the antitrust laws.

Manufacturers have a legitimate right to be concerned about the impact that retail outlets can have on the reputation and goodwill that surrounds their products in the marketplace. My amendment is intended to prevent the possibility that a defendant manufacturer could find itself in Federal court having to disprove an alleged antitrust conspiracy, even though its motives and actions had nothing to do with price fixing. The fact of the matter is, that Congress shouldn't be micro-managing evidentiary standards in these complex, fact-based cases at all.

It is important to understand that when a price-fixing allegation is made under the antitrust laws—a plaintiff must show there was an agreement or conspiracy among two or more participants. Unilateral action is not and, logically, cannot be a violation. A key problem with the language in this bill is that it will be interpreted to mean that no proof of a conspiracy is necessary in a dealer termination case. I know of no instance where a court has

found a Sherman Act—section 1—or Clayton Act—section 3—violation without proof of a conspiracy. We should not imply that less would suffice in the cases covered by this legislation. The result of the language now in the bill will be to prolong and extend unjustifiable litigation.

Unfortunately, the language of H.R. 1470 blurs the distinction between price and nonprice restraints. If it becomes law, it clouds and confuses rather than clarifies. The language in section 2(a) simply has to be "cleaned up" and made more explicit as to its exact purpose.

My amendment would insert clear and readily understandable language into an otherwise difficult to decipher bill. For example, instead of the vague and confusingly neutral term "price competition"—I suggest that it be replaced with "the price or prices charged." A discussion between a manufacturer and retail outlet about price competition does not necessarily connote that they talked about the claimant-dealer's discount prices or about his potential termination.

The language on this point needs to be more apparent and exact, as to what we intend to cover. The substituted language from my amendment is plain and understandable—that is, the communication from the competing dealer to the manufacturer was about the actual price or prices charged by the ultimately discontinued dealer—the claimant.

Further, my amendment makes it clear that as part of the communication from the competing dealer—or dealers—to the manufacturer, that termination of the claimant was specifically requested. That is the core issue in this legislation—whether or not there was an attempt by other dealers to influence and/or pressure the manufacturer into terminating the claimant-dealer—as an outlet for the same product or products in question.

Furthermore, the language of my amendment resolves and clarifies additional, ambiguous terminology in section 2(a). Instead of the phrase "in response to", my language states that the termination occurred "because of and in agreement with" the communication from the competing dealer. "Because of" obviously connotes causation—so that it becomes apparent that the communications from the other dealers were the principal or major reason for the termination. "In agreement with" reflects traditional antitrust terminology, making it clear that there has to be actual evidence of a price-fixing conspiracy—an agreement—between the manufacturer and the other complaining dealers.

I would ask my colleagues to analyze the language of my amendment and compare it with the vague and ambivalent language presently in section 2(a) of H.R. 1470. If in fact we are talking

about antitrust conspiracies, then the bill ought to say just that. We ought to be clear and unambiguous about causation. We ought to be clear and unambiguous about conspiracy.

My amendment, then, would require some preliminary showing of a conspiracy—an agreement—between the defendant-manufacturer and another dealer. So, before the plaintiff would be able to defeat a motion for summary judgment, there would have to be some evidence of a conspiratorial agreement. Further, my amendment would make it explicitly clear that the claimant's termination occurred "because of" that conspiracy. The conspiracy would have to be "the major cause" of the termination. Through these changes, the Fish amendment would resolve the confusion and concern prompted by the vague, ambiguous language currently contained in section 2(a) of H.R. 1470.

Under my amendment, an inference of price-fixing could only be raised in a resale price maintenance termination or supply case if: First, the plaintiff-dealer can demonstrate evidence that a conspiracy occurred; and second, a direct causal link between that conspiracy—agreement—and the manufacturer's ultimate decision to terminate the claimant-dealer.

If Congress chooses to legislate on the evidentiary standard for dealer termination cases, then we cannot ignore the fundamental elements for proving a violation of the Sherman Act or the Clayton Act. In a price fixing case there has to be some evidence of a common design—an agreement. My amendment would ensure legal consistency and fairness.

Last year, my amendment was narrowly defeated on a 204-192 rollcall vote and this legislation did not become law in the last Congress. This year, I again strongly urge this House to adopt my approach. An "aye" vote is a vote for a bill we can all read and understand. An "aye" vote means fairness for litigants on both sides of this issue. These language changes are essential for this bill to achieve widespread acceptance. I strongly urge the adoption of my amendment.

□ 1230

Mr. BROOKS. Mr. Chairman, I move to strike the last word.

I must oppose the gentleman's amendment because—with immaculate, surgical precision—it completely guts the heart of the legislation to prevent price fixing in America.

At one time—not many years ago—the gentleman joined his judiciary colleagues, such as Mr. HYDE, in helping frame, through a set of compromises, the very language that is before us. But, his amendment would now enshrine the very Supreme Court decisions that have made vertical price-fixing cases virtually impossible to bring, or to be heard by a jury. That is unfortunate.

His amendment appears at first blush to be quite simple because of its visual appearance: there are five, small cut-and-bite amendments to the bill that would insert certain words here, and delete certain words there. But, in reality, those tiny, innocent-looking changes are as deadly as poison darts.

As the gentleman well knows, it is the very precision of the words in the antitrust statutes that make these laws enforceable and meaningful to courts. Thus, his attempt to change the bill's use of the phrase "price competition" to that of "price or prices charged," amounts to much more than simply substituting synonyms from the dictionary.

What that change really means is that price fixing can never be proved unless the conspirators are foolish enough to fix a specific price for the item. As Justice Frankfurter instructed us more than 40 years ago, the only price fixers who set specific prices in their conspiracy are stupid price fixers. Even at the turn of the century, when the Standard Oil Trust was at full throttle, more sophisticated devices than setting specific prices were employed in stoking the engine of that monopoly. Certainly, this is not the time to go back to that formulation.

And yet, that is only one of the five very small changes that have been made by the Fish amendment. The other four changes go to undercutting the carefully crafted compromises regarding the evidentiary standard worked out by a substantial majority of the current members of the Judiciary Committee.

Our effort was to restore the balance of the evidentiary standard existing prior to Monsanto. The 1984 Monsanto decision created a near impossible evidentiary burden for plaintiffs by requiring them not only to prove their own case at summary judgment but also to disprove the case of the defendants. Nowhere does that burden exist under the antitrust laws. Thus, section 2(a) simply returns to the evidentiary standard adopted by a majority of Federal circuit courts of appeal prior to the Monsanto decision—it does nothing to create a new, or revolutionary standard, as a few critics try to contend.

The key to section 2(a) of the bill is its recognition that if a plaintiff can show that a price complaint from a rival dealer was a substantial contributing cause to his termination by a manufacturer, then he should at least be allowed to be heard by a jury on the merits of the case. Unlike the word "major," the word "substantial" in H.R. 1470 was chosen because it has a readily understandable meaning in the law. The language of H.R. 1470 thus simply comports most closely with accepted legal usage.

Finally, the attempt to insert the word "agreement" in the Fish amend-

ment is another instance of attempting to reopen the very issues that we put to rest during the compromise negotiations. To repeat one more time, section 2(a) is an evidentiary standard relating to what a plaintiff must show at the pretrial summary judgment stage—and not what he must prove at trial before the jury.

At this early stage, he does not have to prove the existence of an agreement. Only a jury at the end of the trial—after it has listened to all the witnesses—can decide with finality whether an agreement existed between the conspirators. That's how it's worked in the area of contracts for 800 years of Anglo-Saxon law; and that's how it's worked in American antitrust law for the last 100 years.

The Fish amendment ignores all these understandings, to say nothing of past compromises. It, through a thousand cuts, destroys the purpose and meaning of the legislation. I urge its strong repudiation and defeat by the House.

□ 1240

Mr. SCHUMER. Mr. Chairman, I move to strike the requisite number of words and I rise in opposition to the amendment.

First let me salute our chairman of the committee for his leadership on this bill. I think it is a very important bill for this body, for consumers, and I cannot quite understand the opposition from the other side.

What we have seen in the 1980's, as one of the good things in our market, is discounters. In my neck of the woods, I am sure in my colleagues', discounters spring up and allow the consumer to buy goods at a much lower price. It has become a big industry in America. It is a great advantage to the consumers.

And what have we had? We have had some of the big boys, some of the big, old, established department stores and others put the heat on suppliers to cut these discounters off. And that has been allowed because of the Supreme Court decisions.

This bill, the chairman's bill, would allow discounters to flourish again. It could allow the consumer to stop paying the 10 to 23 percent more that they pay on many of these products, and it makes no sense, my colleagues, none at all, to allow this kind of vertical price fixing to exist if we care about consumers rather than the old-line establishment of merchants who do not like the flower of entrepreneurial capitalism and sales that these discounters provide.

I say to my colleagues that if the Fish amendment passes, the only retail executives who try to crush the consumer who will be caught will be those who have an IQ of a pastrami sandwich. What retailer is going to come in and make the case explicit and

say, "I don't want you to sell to so-and-so; it is the only reason you should not sell to so-and-so," and allow that conversation between those two to be part of any record? Nobody.

So the Fish amendment unfortunately would totally eviscerate this new change in law which would bring consumers tremendous amounts of discounting.

Let me talk about something in my area that occurred. R.H. Macy is a venerable New York institution, and I love taking my kids to their Thanksgiving Day parade. Maybe after this speech they will not allow me to line up on the sidewalk, I do not know. But anyway, they are a venerable New York institution, and they found themselves in a lawsuit after a swimwear manufacturer cut off Macy's discount competitor, Kids R Us. The effect was that Macy was the only outlet selling these childrens' swimsuits, giving it complete freedom to set whatever price it wanted.

A New York State court ruled that even though there was proof that Macy's intimidated the swimwear manufacturer into ending its business with Kids R Us, no price fixing took place because there was not an agreement, a written agreement, if my colleagues can believe this, between Macy's and the manufacturer on the minimum price. That is what the Fish amendment says, that you would have to have something like that in order to meet the burden of proof.

So I would say to my colleagues very simply, consumers are having a very difficult time in this dramatic recovery that we are having, that no consumer seems to feel. We hear from the administration, the Federal Reserve, the economists, that we are recovering. No one that I talk to feels like they are recovering, they feel like they are receding, they feel like they are in a recession.

One of the few things a consumer can rely upon is going to a discounter and getting a break. The chairman's bill would give that break. The Fish amendment would take away and eviscerate that break altogether.

It is high time, ladies and gentlemen, that we gave the consumer this break, that we ended vertical price fixing, and that we said that whoever wants to sell a product, at whatever cost they choose to sell it, should do so. That is, after all, the American way.

Mr. CAMPBELL of California. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

Mr. Chairman, I would like to speak about practicalities of litigating antitrust cases. That is what the Fish amendment is about. It is very simply, and it is a very good amendment.

Here is what the bill says right now: The bill says that if any retailer is cut-off by a manufacturer following a com-

plaint by another retailer, bang, that is enough. And I read from the statute of the bill:

That shall be sufficient to raise the inference that such person and such competitor engaged in concerted action.

Now the practicalities of litigation. Here is what happens every day. There is not a manufacturer in the United States who does not weekly, or daily, receive some communication from retailers, and there is not one manufacturer in the United States, I would hazard to say, who does not get complaints from one retailer about another retailer. That is the average, workaday reality in our country.

□ 1250

Therefore, if all it takes it one retailer complaining to a manufacturer about another retailer to be sufficient to raise the inference of concerted action, you have won.

The second point of practicality, the case goes to the jury. It does not automatically win. It goes to the jury, but the reality of prosecuting cases like this is that if you can take a case beyond the motion to dismiss, you can intimidate the defendant into a settlement.

I happen to think that America is sued enough. I happen to think that the lawsuits per capita in the United States, totaling greater than any other developed economy on Earth, should not be increased, and I look at this bill, and I know they will be increased.

Along comes the Fish amendment, and the Fish amendment says, no, you do not automatically get to intimidate and take your case to the jury just because some other retailer complained. What you need is proof that that manufacturer cutoff the retailer because that retailer was undercutting price, which is what the Supreme Court has said since 1918 when the Colgate decision modified the Dr. Miles decision.

So the issue today is: Shall we change this law which has been the law for 70 years, or shall we maintain it and put some limitation on antitrust litigation?

Last point, there have been a number of interesting and amusing arguments that I have heard, Mr. Chairman, relative to the Fish amendment requiring people to be stupid enough to put their price agreement in writing. The Fish language never refers to proof of a written agreement. The word "agreement" is not in the Fish amendment. The word "written" is not in the Fish amendment.

So let me tell the Members practically what it does. It restores the law to where the law was, and that is the judge or jury has to determine what was the reason for this particular retailer to be terminated, and you do that all the time in antitrust litigation without an actual written agreement.

What you do is check the record. Had the manufacturer terminated other dis-

tributors for not maintaining a sufficient sales force, or was this the only one that he or she ever terminated? If it is the latter, well then, you begin to think maybe it was because this person was a price cutter and not because this retailer was actually failing to meet his or her obligations to distribute the goods with the appropriate sales force. You ask how many times was this particular distributor reprimanded? Was this distributor reprimanded on other occasions, or was the only time that he or she was ever reprimanded was following a complaint from the other distributor? In other words, you use your common sense as courts have been since 1918.

I make appeal to one other area of law. It is precisely in this mixed-motivation area that so much of our title VII litigation, on employment discrimination, is premised, and courts have been doing it since 1964. What was the reason you terminated this employee? Was it because the employee was not productive, or because the employee was a member of a racial group that you wished to discriminate against? You do not know, but you put it to the judge to determine. That is all the Fish amendment would do.

In conclusion, there is nothing in the Fish amendment that will gut this bill. There is everything in the Fish amendment that will restore a proper ability to argue what the real reason for terminating a distributor was. That is all. It just says what is the real reason, and bear in mind, if you do not adopt the Fish amendment, you are giving every terminated distributor a lawsuit, an intimidation, against a manufacturer in the United States, and I think that we have too many lawsuits.

Mr. BRYANT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would just like to re-emphasize what has been said well by previous speakers, that the chairman of the Committee on the Judiciary, the gentleman from Texas [Mr. BROOKS] has brought to the House today a bill which does not create new law but simply reaffirms a longstanding policy against vertical price fixing.

There has not been a vertical price-fixing case brought in this country since 1981. It is very clear that some garbled court decisions and a policy of not enforcing this law by the Justice Department leaves us in a position where we have the obligation today to act on behalf of the consumers and make clear that this kind of price fixing which artificially raises prices cannot take place.

A moment ago, the preceding speaker read from the bill, but he did not read from the operative part of the bill.

Let us see, if you pick the bill up, it is only about a three-page bill in total. It simply says that any civil action based on a claim arising under the op-

erative act and alleging a contract, combination, or conspiracy to set, charge, or maintain prices, evidence that a person who sells a good or service to the claimant for resale received from a competitor of the claimant a communication regarding price competition by the claimant in the resale of a good or service, and in response to that communication, terminated the claimant as a buyer of a good or service for resale, or refused to supply to the claimant some or all of such goods or services requested by the claimant, shall be sufficient to raise the inference that such person and such competitor engaged in concerted action to set prices. That is a very clear and a very reasonable standard.

The amendment pending before the House at this moment offered by the gentleman from New York [Mr. FISH] is designed to make this standard impossible and to make it impossible to bring an action that would have any likelihood of success to stop a vertical price-fixing conspiracy.

The fact of the matter is that as was referred to by a previous speaker, a terminated discounter cannot reasonably be expected to meet the provisions of the Fish amendment. He cannot be expected to ever learn the intricate details of a private conversation between the companies who are conspiring, and a terminated discounter cannot reasonably be expected to ever be able to prove even before he gets to trial under the terms of this amendment that none of the hypothetical justifications that will always be put forth by the conspiring manufacturer were significant, and that the complaint was, in fact, the major cause of the termination. That is impossible to prove.

This amendment guts the bill. It makes it impossible for us to move forward here today on a very significant consumer issue.

I urge the Members to vote against the amendment. Let us pass this bill, and do the consumers of the United States a favor by offering them some protection from insidious vertical price-fixing schemes.

Mr. HUGHES. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, first of all, let me tell you that I strongly support the bill as it came out of the Committee on the Judiciary. I want to congratulate the distinguished gentleman from Texas for crafting a well-balanced bill.

I have listened with great interest to some of the debate involving what this amendment may or may not do. I listened very attentively to the argument of our very distinguished colleague from California, who is not only a fine lawyer but taught law for many years.

But I have to differ with him on what the impact of this amendment would be. We are talking about price fixing and what has been the per se rule

which I think everybody will concede has been modified by case law in the last few years, particularly under the Monsanto decision and the Sharp decision, both of which made it much more difficult for the discounters basically to make their case.

It is not a question of whether or not we are opposed to price fixing. I think most of the people who have spoken agree that price fixing is per se illegal. That is why the Congress made it illegal.

It is just unfortunate that the chief law enforcement officer of this country, the Attorney General of the United States, instead of supporting the law of the country, undercuts it. They filed an amicus brief a few years ago in the Monsanto case and basically argued to undercut the statute. They do not come to the Congress, which is the process, and attempt to change the law if they felt there was something wrong with the law. What they did was they, instead of supporting the law and arguing for the law and bringing price-fixing cases, which they have never done in the last 10 years or so, they basically attempted to undercut it before the courts, which is a very curious process that we have seen become very popular in some quarters in the last 10 years.

But Fish would, in my judgment, gut the bill, and for this reason: The bill does provide that when a defendant brings a motion for summary judgment, the court will look at certain facts to see whether there is a case. One of the things that Fish, the Fish amendment, would require the court to look at is whether or not the price-fixing evidence was the major contributing factor.

Now, let me tell the Members that people do not fix prices in public. They fix them in the back rooms. They fix them on a street corner, and they fix them at a cocktail party, and they generally do not write letters. It is a very hard standard to meet as it is.

The bill does require that the evidence of price fixing be more than de minimis, because as the gentleman from California knows, the bill requires that it be a substantial contributing cause of the discharge of that particular retailer.

We came up with that language after wrestling with it for months, and what I find interesting is that my colleague, the gentleman from New York, and I worked a few years ago in developing this language. I was the Democrat in the committee, and I then served on the subcommittee, that got my Democratic colleagues to agree upon this approach which made my colleague from New York very happy, because he felt at that time it was a reasonable solution.

□ 1300

Now, I do not know what has happened between then and now to make

that unreasonable. To prove that it is a substantial contributing factor to the discharge of that retailer is not an easy task when you are dealing with price fixing. So the standard is tough as it is.

The gentleman from New York [Mr. FISH] would make it impossible.

Now, let us face it. If you are opposed to the bill, if you think that fixing prices, vertically fixing prices is OK, vote against the bill, but do not do it this way. This is just a way basically of making it impossible for a discounter to make his case in court, because if he is thrown out on a motion for summary judgment, and that is what we are talking about, in essence you have destroyed the ability, the remedy for a discounter to bring an action against somebody who has unfairly basically competed with him.

Now, in essence, it is this question. If you are for predatory pricing or price fixing, I suppose you support the amendment or vote against the bill, or both; but if you really want to do something about predatory pricing in this country, if you believe that the free enterprise system works best when retailers are able to compete on a level playing field, then you support the bill.

So, Mr. Chairman, I would urge my colleagues to defeat the Fish amendment and support the bill on final passage.

Mr. CAMPBELL of California. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I am happy to yield to the gentleman from California.

Mr. CAMPBELL of California. Mr. Chairman, I appreciate the kind words of my colleague. I respect the gentleman's difference with me.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

(At the request of Mr. CAMPBELL of California, and by unanimous consent, Mr. HUGHES was allowed to proceed for 1 additional minute.)

Mr. HUGHES. Mr. Chairman, I yield to the gentleman from California.

Mr. CAMPBELL of California. In the question of whether a plaintiff can prove a case or not, Monsanto, as the gentleman identified, made it more difficult for a plaintiff to proceed.

I wonder if the gentleman might respond to consider the point that in the Monsanto case itself, the plaintiff won.

Mr. HUGHES. Well, that is true. The plaintiff did win in that case, because the evidence was overwhelming of price fixing.

Mr. CAMPBELL of California. Mr. Chairman, if the gentleman will continue to yield, the evidence in Monsanto was complaints from other distributors to the manufacturer. The manufacturer said no, his first distributor was not doing the job it should, and it went to the jury to decide, which was the more likely explanation.

Mr. HUGHES. And that is all we want. We just want to go to the jury.

Frankly, I think 12 men and women looking at a case should decide whether or not in fact the effort to discharge that retailer was the substantial contributing factor. We just want the jury to decide it. Frankly, you folks do not want to go to the jury. I have a lot of faith in the jury to make the right decision.

Mr. CAMPBELL of California. Mr. Chairman, if the gentleman will yield one last time, I only raise the question because the gentleman said it was impossible. This is one instance when it actually carried.

Mr. BALLENGER. Mr. Chairman, I move to strike the requisite number of words.

First, Mr. Chairman, let me state to everybody here that I am not a lawyer. I have not practiced any kind of law one way or another.

This whole debate that I have been listening to reminds me that I should say that I am a manufacturer and have been in the manufacturing business for the last 25 years.

People talk about price fixing. I do not know how many of you, most of you being lawyers, ever had to go to a lawyer to find out what kind of service you can get, and everybody charges the same price. It is all set in some back room somewhere by a bunch of lawyers deciding what they should charge.

Let me just say, having spent my life in manufacturing and having spent my life in deciding what prices products should sell for, one of the major factors that you run into nowadays is the cost of litigation. The cost of litigation by any manufacturer if he does not prepare for that cost, he is not going to make a profit. Lawyers have raised the cost of product liability where it goes right out the roof. You can hardly find any insurance company that is willing to sell it to you, because lawyers have practically destroyed this whole situation. Lawyers have increased the cost of workmen's compensation by their ability immediately to decide that we are going to go to court at the first drop of a hat.

The way I read this bill, without the Fish amendment, it appears that any retailer can write a letter and accuse you of anything and immediately you are in court and have to prove you are innocent.

If this is not a lawyer's bill, I have never seen anything like it before. I would say rather than helping the consumer, this bill, if passed without the Fish amendment, is going to raise the cost of every product that we have in this country today.

I do not know what you all have done up here, but when I was in the North Carolina Senate we used to have a thing called recusing ourselves because of a conflict of interest. I think it would be great if in this particular bill where everybody is making lawyers richer if the lawyers would refuse to

vote on this on the basis that they do have a conflict of interest and let the rest of us decide what is good for the people of the United States.

Mr. COBLE. Mr. Chairman, I move to strike the last word.

Mr. FISH. Mr. Chairman, will the gentleman yield to me?

Mr. COBLE. I yield to the gentleman from New York.

Mr. FISH. I will be very brief, Mr. Chairman, but I think some remarks by the gentleman from New Jersey require rebuttal, particularly where it was said that my amendment is a vote for price fixing. That is an extremely unfair characterization.

What my amendment does, and all it does, is to restore the classic antitrust proof of conspiracy requirement. That is the law and the case in every other allegation of price fixing, and I thank the gentleman for yielding to me.

The CHAIRMAN pro tempore (Mr. TORRES). The question is on the amendment offered by the gentleman from New York [Mr. FISH].

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

RECORDED VOTE

Mr. FISH. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 196, yeas 218, not voting 19, as follows:

[Roll No. 303]

AYES—196

Allard	Duncan	Kolbe
Anthony	Edwards (OK)	Kyl
Archer	Emerson	Lagomarsino
Army	English	Lewis (CA)
Baker	Erdreich	Lewis (FL)
Ballenger	Espy	Lightfoot
Barrett	Fawell	Livingston
Barton	Fields	Lloyd
Bateman	Fish	Long
Bereuter	Franks (CT)	Lowery (CA)
Bevill	Galleghy	Lowey (NY)
Bilirakis	Gallo	Marlenee
Bliley	Gekas	Martin
Boehlert	Gilchrest	McCandless
Boehner	Gillmor	McCullum
Brewster	Gingrich	McCrery
Browder	Goodling	McEwen
Bunning	Goss	McHugh
Burton	Gradison	McMillan (NC)
Byron	Grandy	Michel
Callahan	Green	Miller (OH)
Camp	Gunderson	Miller (WA)
Campbell (CA)	Hammerschmidt	Mollohan
Campbell (CO)	Hancock	Montgomery
Chandler	Hansen	Moorhead
Clinger	Harris	Moran
Coble	Hastert	Morella
Coleman (MO)	Hefley	Morrison
Combest	Henry	Myers
Condit	Herger	Natcher
Coughlin	Hobson	Neal (NC)
Cox (CA)	Horn	Nichols
Cramer	Horton	Nussle
Crane	Houghton	Olin
Cunningham	Hubbard	Orton
Dannemeyer	Hunter	Oxley
Darden	Hutto	Packard
Davis	Inhofe	Parker
DeLay	Ireland	Patterson
Derrick	James	Paxon
Dickinson	Johnson (CT)	Payne (VA)
Doolittle	Johnson (TX)	Penny
Dornan (CA)	Kasich	Peterson (FL)
Dreier	Klug	Petri

Pursell	Schulze	Tauzin
Quillen	Sensenbrenner	Taylor (MS)
Ramstad	Shaw	Taylor (NC)
Ravenel	Shays	Thomas (CA)
Ray	Shuster	Thomas (WY)
Regula	Sisisky	Thornton
Rhodes	Skeen	Thorton
Riggs	Slaughter (NY)	Valentine
Ritter	Smith (NJ)	Vander Jagt
Roberts	Smith (OR)	Vucanovich
Roemer	Smith (TX)	Walker
Rogers	Snowe	Walsh
Rohrabacher	Solomon	Weber
Ros-Lehtinen	Spence	Weldon
Roth	Spratt	Wolf
Roukema	Stallings	Wylie
Rowland	Stearns	Young (AK)
Santorum	Stenholm	Young (FL)
Sarpalius	Sundquist	Zeliff
Saxton	Tallon	Zimmer
Schaefer	Tanner	
Schiff		

NOES—218

Abercrombie	Gilman	Nagle
Ackerman	Glickman	Neal (MA)
Alexander	Gonzalez	Nowak
Anderson	Gordon	Oakar
Andrews (ME)	Guarini	Oberstar
Andrews (NJ)	Hall (OH)	Obey
Andrews (TX)	Hall (TX)	Oliver
Annunzio	Hamilton	Ortiz
Applegate	Hatcher	Owens (NY)
Aspin	Hayes (IL)	Owens (UT)
Atkins	Hefner	Pallone
AuCoin	Hertel	Panetta
Bellenson	Hoagland	Pastor
Bennett	Hochbrueckner	Payne (NJ)
Bentley	Hughes	Pease
Berman	Hyde	Pelosi
Bilbray	Jacobs	Perkins
Bonior	Jefferson	Peterson (MN)
Borski	Jenkins	Pickett
Boucher	Johnson (SD)	Pickle
Brooks	Johnston	Porter
Brown	Jones (GA)	Poshard
Bruce	Jones (NC)	Price
Bryant	Jontz	Rahall
Bustamante	Kanjorski	Rangel
Cardin	Kaptur	Reed
Carper	Kennedy	Richardson
Carr	Kennelly	Ridge
Clay	Kildee	Rinaldo
Clement	Kleczka	Roe
Coleman (TX)	Kolter	Rose
Collins (IL)	Kopetski	Rostenkowski
Collins (MI)	Kostmayer	Roybal
Conyers	LaFalce	Russo
Cooper	Lancaster	Sabo
Costello	Lantos	Sanders
Cox (IL)	LaRocco	Sangmeister
Coyne	Laughlin	Sawyer
de la Garza	Leach	Scheuer
DeFazio	Lehman (CA)	Schroeder
DeLauro	Lehman (FL)	Schumer
Dellums	Lent	Serrano
Dicks	Levin (MI)	Sharp
Dingell	Levine (CA)	Sikorski
Dixon	Lewis (GA)	Skaggs
Donnelly	Lipinski	Skelton
Dooley	Luken	Slattery
Dorgan (ND)	Machtley	Smith (IA)
Downey	Manton	Staggers
Durbin	Markey	Stark
Dwyer	Martinez	Stokes
Dymally	Matsui	Studds
Early	Mavroules	Swett
Eckart	Mazzoli	Swift
Edwards (CA)	McCloskey	Synar
Edwards (TX)	McCurdy	Thomas (GA)
Engel	McDade	Torres
Evans	McDermott	Torricelli
Fascell	McGrath	Towns
Fazio	McMillen (MD)	Trafficant
Feighan	McNulty	Traxler
Flake	Meyers	Unsoeld
Foglietta	Mfume	Vento
Ford (TN)	Miller (CA)	Viscosky
Frank (MA)	Mineta	Volkmmer
Frost	Mink	Waters
Gaydos	Moakley	Waxman
Gejdenson	Molinar	Weiss
Gephardt	Moody	Wheat
Geran	Murphy	Whitten
Gibbons	Murtha	

Williams	Wolpe	Yates
Wise	Wyden	Yatron

NOT VOTING—19

Bacchus	Hayes (LA)	Slaughter (VA)
Barnard	Holloway	Smith (FL)
Boxer	Hopkins	Solarz
Broomfield	Hoyer	Washington
Chapman	Huckaby	Wilson
Ewing	Mrazek	
Ford (MI)	Savage	

□ 1333

The Clerk announced the following pair:

On this vote:

Mr. BROOMFIELD for, with Mr. HOYER against.

Mr. MOAKLEY, Ms. MOLINARI, Mr. LENT, and Mr. STARK changed their vote from "aye" to "no."

Ms. SLAUGHTER of New York and Mrs. LOWEY of New York changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. CAMPBELL OF CALIFORNIA

Mr. CAMPBELL of California. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CAMPBELL of California: Add the following at the end of section 2:

(c) It shall be a defense to an action described in this section that the defendant was so small in the relevant market as to lack market power.

Mr. CAMPBELL of California. Mr. Chairman, the amendment that I offer is on behalf of those businesses that are so small they lack market power. This amendment is endorsed and supported by the small business community of the United States, as principally represented by the National Federation of Independent Business.

The statute that we have before us amends the current law. The current law says that it is illegal for a manufacturer to agree with a distributor as to the price of a good to be distributed. It is, however, permitted for a manufacturer to suggest a price to the distributor and to choose distributors on the basis of who provides the best service, including who is the least likely to be a discounter.

The problem with the bill before us is that it changes this. The bill before us creates the opportunity for more lawsuits, particularly against those distributors who happen to complain to a manufacturer. It is for that reason that small business has spoken against this bill and in favor of the amendment that I offer.

What will happen as a result of this bill is that any small business retailer who calls up and complains to a manufacturer about another retailer's price will have opened herself or himself up to a lawsuit. Now, I happen to think we have enough lawsuits in this country. I happen to think we are in enough economic difficulty in this country, and I do not think we should add to that bur-

den, at least not as to the small businesses.

Therefore, my amendment is simple. It reads in its entirety that we simply exempt from this new law those businesses so small that they lack market power. That does not mean they can fix prices. That does not mean they can violate the Sherman Act. It means the law as it existed before today will continue as to them, but what will not apply to them is the ability to take a case to a jury and to seek treble damages just because one distributor made a complaint to a manufacturer against another distributor.

I have been asked, what is it in this bill that refers to market power? What does it mean to be so small as to lack market power? The answer is that this is a term of antitrust law that has been adjudicated from over 100 years under section 2 of the Sherman Act.

"Market power" means the ability to have an effect on the price or the quantity in the market, and if you are big enough to have that kind of effect, then you are going to be subject to this new law. I am not opposing that. But if you are so small that you are not going to have an effect on the market, for heaven's sake, please, let us not create a new opportunity for them to be hauled into court and be subject to treble damages.

Market power is a determination that the courts have made on three factors: First, the market share; second, the elasticity of demand; and, third, the elasticity of supply. It is impossible to say in advance what any given percentage happens to be market power. However, in the area of merger analysis, the Department of Justice has followed a rule that the courts have followed as well, whereby market power is presumed to begin at around 15 percent—not 40 percent. Some of my colleagues, Mr. Chairman, have received notification that my amendment exempts anybody who has 40 percent market share or below. The merger guidelines, which are the most recent expression of the market power concept, are at 15 percent.

Mr. Chairman, this is good for small business, it is good for the economy, and Lord knows, our economy needs some help.

□ 1340

Mr. SYNAR. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL of California. I am pleased to yield to the gentleman from Oklahoma.

Mr. SYNAR. Mr. Chairman, could the gentleman from California [Mr. CAMPBELL] for the RECORD please name one single price-fixing case where the Supreme Court said that market power of the firms charged with price fixing were exempt from antitrust laws?

Mr. CAMPBELL of California. Mr. Chairman, reclaiming my time, I can-

not, because no price-fixing case has determined market power. The phrase, however, does have good established law in Clayton Act, section 7. I give you Philadelphia National Bank, I give you also the Von's Grocery case, and I give you the merger guidelines. The phrase "market power" has not been used in price fixing, section 1. It has a 100-year history, however, in Sherman 2, and an 80-year history in Clayton Act.

Mr. SYNAR. If the gentleman will yield further, to clarify the RECORD, this gentleman will point out all those cases mentioned were in merger cases and not price-fixing cases.

Mr. CAMPBELL of California. Mr. Chairman, again, as the gentleman noted, there has not been the occasion to use the phrase "market power" under Sherman, section 1. There has, however, under Clayton 7 and Sherman 2. Thus, wherever market power has been used, it substantiates what I put to you today, a matter the courts know about, and interpreted market power to begin under the merger guidelines at 15 percent.

To conclude with what is left of my time, I do wish to note in conclusion to Members that not only is this supported by small business, it is a key vote as listed by the National Federation of Independent Business, a key vote on NFIB.

The CHAIRMAN. The time of the gentleman from California [Mr. CAMPBELL] has expired.

(At the request of Mr. SYNAR and by unanimous consent, Mr. CAMPBELL of California was allowed to proceed for 1 additional minute.)

Mr. CAMPBELL of California. Mr. Chairman, I yield to the gentleman from Oklahoma [Mr. SYNAR].

Mr. SYNAR. Mr. Chairman, the gentleman, as those of us on the floor realize, represents Silicon Valley. Of course, we have in Silicon Valley IBM, Hewlett-Packard, Sperry, and even Apple Computer.

If the gentleman from California [Mr. CAMPBELL] would indulge me just for the sake of argument, let us say that IBM, Hewlett-Packard, Sperry, and Apple, all of whom have less than 15 percent of the market share individually, by the gentleman's amendment would it not be permitted that they could all conspire together to terminate a discount computer store retailer and be exempt from the bill?

Mr. CAMPBELL of California. Mr. Chairman, no, the gentleman is quite wrong. Such an agreement would be a horizontal combination, a per se illegal violation of the Sherman Act, section 1. If there is a horizontal agreement, it is per se violative and it is not affected by my amendment. No. Unequivocally, no.

Mr. SYNAR. Not to terminate the retailer?

Mr. CAMPBELL of California. Any horizontal agreement between Hewlett-

Packard, IBM, or any other group of horizontal competitors, is not permitted under the antitrust laws. My amendment does nothing to change that.

Mr. SYNAR. Mr. Chairman, if the gentleman will yield further, how does that fly in the face of the Sharp decision?

Mr. CAMPBELL of California. Mr. Chairman, the Sharp decision is not relevant to my amendment, nor is it relevant to the example that the gentleman gives. The Sharp opinion does not deal with the horizontal agreement between manufacturers.

The CHAIRMAN. The time of the gentleman from California [Mr. CAMPBELL] has again expired.

(At the request of Mr. SYNAR and by unanimous consent, Mr. CAMPBELL of California was allowed to proceed for 1 additional minute.)

Mr. CAMPBELL of California. Mr. Chairman, I yield to the gentleman from Oklahoma [Mr. SYNAR].

Mr. SYNAR. Mr. Chairman, the gentleman comes from California, as we have established. Right now in the State of California there is a potential merger between Bank of America and Security Pacific.

Now, a review of that merger shows that in many of the communities where these two banks are operating, that the banking entity that will evolve will have somewhere in the neighborhood of 30 to 35 percent of the market. I take it from the gentleman's basic discussion of his amendment, the gentleman would be opposed to that merger on the grounds that the newly combined banking entity would have undue banking power. Is that correct?

Mr. CAMPBELL of California. Mr. Chairman, reclaiming my time, I think it is appropriate to respond on the hypothetical without stipulating that Security Pacific or Bank of America has any particular share in any particular market. But I will give the gentleman a direct answer.

If there is a bank merger in a relevant market which accumulates a market share of 35 percent, and if there are no particularly easy barriers to entry, that is to say if barriers to entry are not particularly low, then, yes, I would be concerned about a merger of that size and it would violate the merger guidelines.

Mr. BROOKS. Mr. Chairman, I rise in strong opposition to this amendment that would attempt to carve out an exception to the per se prohibition against price fixing simply because the offender possesses no great market power.

This is an absurd notion that has never had any place in the antitrust laws. I am, to be quite frank, a little surprised that the author of the amendment, a former professor of antitrust, would be offering it. As the gentleman well knows, price fixing is con-

sidered a per se offense under the antitrust laws. And the application of the per se rule is very straightforward: If you commit this type of anticompetitive act, you will be held accountable regardless of any justification you may attempt to assert. In other words, there are no mitigating factors to a per se offense because the conduct is deemed so pernicious as to be without redeeming economic value. Price fixing is one such offense, and has been since Addyston Steel was decided in 1899.

The securities law equivalent of the Campbell amendment would be to say that insider trading is acceptable if you only illegally trade 200 shares or less. Or, that Bonnie and Clyde should have been given leniency because they were only robbing small banks in Kansas and Missouri.

Moreover, let's look at just who are the beneficiaries of this contrived amendment. Market power—even if you use the Department of Justice's own guidelines—doesn't occur until a single firm controls at least 40 percent of the market; and even then, there are mitigating factors. Given this definition, let's think about local retailers in the area. I would ask the gentleman to name one retailer in the Washington, DC, area of men's or women's clothing, or of televisions and VCR's that has 40 to 50 percent of the market. Woodies, Macy's, Bloomingdale's, Neiman-Marcus wouldn't qualify as having market power. That means that they would all pass as small businesses under the amendment, and so could price fix. Is this whom the gentleman seeks to protect?

Really, the amendment should just read: "Strike everything after the enacting clause."

Let us not wrap the banner of small business around an amendment that would exempt the Fortune 500 from this legislation. Let us be a little more plainspoken and faithful to the antitrust tenets that have served us so well for so long.

Mr. WYDEN. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my friend, the gentleman from Oregon.

Mr. WYDEN. Mr. Chairman, I just want to concur in the remarks of the gentleman from Texas [Mr. BROOKS].

Mr. Chairman, as chairman of the Subcommittee on Regulation of the Small Business, I would say that we have a good man, Mr. CAMPBELL, offering a very bad amendment. My view is that his proposal is really an economic wolf in sheep's clothing. Chairman BROOKS is absolutely right to say that virtually everyone would be exempted under this legislation.

Mr. Chairman, I would submit to Members that trying to find somebody who would not be exempted under this would be tougher than finding a needle in a haystack. The distinguished gentleman from Texas [Mr. BROOKS] men-

tioned a number of companies in this area. We have looked. We believe GM would be exempt under this particular amendment.

What this amendment would do would be to allow malignant partnerships to be set in place that could fix market prices on a variety of goods, which would have a devastating impact on small retailers and distributors.

Mr. Chairman, I urge Members to oppose this. This has been an issue we had a considerable interest in in my Subcommittee on Regulation, Business Opportunities, and Energy of the Committee on Small Business. I urge Members to support Chairman BROOKS on this matter.

Mr. GILMAN. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my friend, the gentleman from New York.

Mr. GILMAN. Mr. Chairman, I rise in support of the remarks by the gentleman from Texas, the distinguished chairman of the Judiciary Committee [Mr. BROOKS] and in opposition to the amendment offered by the gentleman from California [Mr. CAMPBELL].

Mr. Chairman, this amendment actually would not provide relief for help-less small businesses who innocently practice price fixing. No price fixing is innocent. But most importantly, the wording of the Campbell amendment would not alter H.R. 1470—it would gut the bill.

The Campbell amendment virtually exempts manufacturers who engage in price fixing if they do not have market power. Mr. Chairman, case law defines market power as controlling as much as 30 percent or more of the entire market for any given product.

There are very few cases in which a company controls more than 20 to 30 percent of any market.

Accordingly, I ask my colleagues to recognize what this amendment really is—it is as good as voting against the bill altogether, because it effectively takes the teeth out of H.R. 1470.

□ 1350

Ms. KAPTUR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the Campbell amendment and in support of the committee bill. I hesitate to oppose a fine mind and a fine Member like our colleague, the gentleman from California, TOM CAMPBELL, but in this case it is a curious amendment that the gentleman offers.

I oppose the amendment because I view it as very anticompetitive. The gentleman in the past has been very supportive of procompetition amendments.

I also oppose it because it is truly anticonsumer. I wanted to begin by saying that under current law, the context in which we are operating, price-fixing conspiracies are equally illegal for one and all.

I do not think that there should be any exceptions to that. We are also operating in an environment where the Justice Department has not brought a single vertical price-fixing action since 1981. In fact, the two most recent Supreme Court decisions in the 1980's have confused the law, which is why this bill is necessary, and made it impossible for discounters to bring legal action against vertical price fixing. So they are already being adversely affected discounters across the country.

I also find the amendment curious because, in fact, market power has nothing to do with a percent, with 40 percent or 50 percent, but rather, the definition of relative power within a given market.

In fact, I would view the gentleman's amendment as setting up a very arbitrary standard. So I go back to my original principle, which is that current law says that price fixing conspiracies are equally illegal for one and for all, and I think it should remain so.

I would like to continue for just a moment and say that the gentleman claims that this is a small business amendment. I truly view it as not being in the interest of small business, because for many businesses it would gut their right to succeed in a court proceeding. The Campbell amendment would actually place a greater burden of proof on discounters to prove that a manufacturer engaged in price fixing, had market power, in order to receive the loss protection.

I think that if we look at the way the Justice Department's own definition requires a 40 percent or more share of the entire market, there are very few companies that can meet that test. In fact, Anheuser-Busch is currently arguing in court that it lacks market power in New York. So I think that what this amendment would really do is cost the consumers of this country over \$20 billion more a year because they would have to pay the price of the vertical price fixing that would in fact occur.

I rise in opposition to the Campbell amendment and in support of H.R. 1470. I believe that the committee bill preserves free competition in the marketplace. It promotes economic efficiency. It restores effective deterrence to price fixing in the sale of consumer goods and safeguards the rights of independent businesses to offer consumers greater choice and lower prices.

Mr. CAMPBELL of California. Mr. Chairman, Will the gentleman yield?

Ms. KAPTUR. I yield to the gentleman from California.

Mr. CAMPBELL of California. Mr. Chairman, I appreciate the kind remarks of the gentlewoman from Ohio [Ms. KAPTUR] at the beginning.

I am confounded by this, though. I was mentioned by the gentlewoman as well as others. Please, what citations do they have for the proposition that the Justice Department says market power begins at 40 percent?

Ms. KAPTUR. That is the Justice Department's definition.

Mr. CAMPBELL of California. What publication, what statement, please?

Ms. KAPTUR. That was the information that the committee was in receipt of from the Justice Department.

Mr. CAMPBELL of California. Mr. Chairman, if the gentlewoman will continue to yield, I had the honor to serve in the Justice Department and to head the Federal Trade Commission Bureau of Competition. There is no such statement that 40 percent constitutes market power of which I am aware from the Department of Justice.

Ms. KAPTUR. One of my statements was that the arbitrary fixation of a percentage really is not what we are talking about here. We are talking about relative market power, and the Justice Department's arbitrary choice of 40 percent, I think, is a problem here. We are talking about relative power.

The gentleman's definition would essentially exempt most of, in fact the majority of businesses in this country.

Mr. CAMPBELL of California. Mr. Chairman, if the gentlewoman will continue to yield, I appreciate very much her kindness. I agree we should not have an arbitrary percentage. That is why the amendment does not use one.

For the life of me, she has not given a citation to the Justice Department's 40 percent. It is running around here, and it is not correct.

The CHAIRMAN pro tempore. (Mr. TORRES). The time of the gentlewoman from Ohio [Ms. KAPTUR] has expired.

(On request of Mr. BROOKS and by unanimous consent, Ms. KAPTUR was allowed to proceed for 1 additional minute.)

Ms. KAPTUR. Mr. Chairman, I would like to cite for the RECORD, under mergers and acquisitions, and I quote:

While the court did not specify the size range that would constitute an undue percentage share or a significant increase in competition, it held presumptively unlawful a merger that resulted "in a single bank's controlling at least 30 percent of the commercial banking business" in the relevant market and increased the market share of the two largest firms by "more than 33 percent." It concluded that the presumption was not, in that case, overcome either by evidence as to the purported vigor of existing competition among commercial banks or by the various affirmative justifications offered in support of the consolidation.

Mr. FISH. Mr. Chairman, I move to strike the requisite number of words.

Mr. CAMPBELL of California. Mr. Chairman, will the gentleman yield?

Mr. FISH. I yield to the gentleman from California.

Mr. CAMPBELL of California. Mr. Chairman, I thank the gentleman for yielding to me.

Truly it was not the Department of Justice at the end of the day, was it? The quotation was from the Philadel-

phia National Bank case. Actually, it was a summary of the Philadelphia National Bank case from the same book that I have, "Antitrust Law Developments." Second, in which the Supreme Court had held that in that particular context of that particular merger, market power might begin at 30 percent.

If we continue reading on that same section of the ABA antitrust section summary of court cases, we will find the Brown Shoe case, where the Supreme Court held 5 percent was the beginning of market power, and the Von's Grocery case, which held that the market power test began at 3 to 4 percent.

If we were to refer to the Department of Justice, which is what was the implication from all of my colleague's commentary on the other side, then the Department of Justice has spoken in the merger area. They have not spoken in the other areas, but in the merger area they have.

And in the merger area they have set up a series of indices called Herfindahl. The Herfindahl Index test is a very complex one. It deals with the multiplication of market shares, but it comes down to any merger whereby the increase in the Herfindahl Index is 40 points or more, provided that the postmerger Herfindahl at 1,800 will increase by more than 50 and will be challenged, and an increase in Herfindahl of more than 50 translates to two firms of 7 percent merging.

So in conclusion on this point, on the issue on the floor, please get it straight. The Department of Justice has never said 40 percent is market power. The circular going around is not fair.

Second, if we want to cite one Supreme Court opinion holding 40 percent, fine. I can cite others at 5 percent and at 4 percent.

Lastly, if we do think the Department of Justice is relevant, bear in mind their test was two 7 percent firms merging.

Mr. FISH. Mr. Chairman, reclaiming my time, I think the amendment is a very fair amendment. The small businesses in our country would be exempt from the punitive effects of this bill. One of the problems we have been trying to address this afternoon is this legislation simply throws out too big a net.

The entire small business community and particularly the NFIB favors the amendment by Mr. CAMPBELL. It is pivotal to their support for this bill.

I say to my colleagues that should this amendment fail, the author, the NFIB, the business community and myself will urge a no vote on final passage.

Mr. LEVINE of California. Mr. Chairman, I move to strike the requisite number of words.

I rise in strong opposition to the market power amendment that we are considering. The legislation before us

is aptly named the Price Fixing Prevention Act. The Campbell amendment would in fact make the legislation the Price Fixers Protection Act.

□ 1400

My distinguished colleague's amendment purports to help small business. In reality, the biggest beneficiaries under this amendment would be large retailers who would be given permission by the amendment to fix prices, and in fact to discourage competition. And the big losers, and we should emphasize the importance of this or the corollary of this amendment, the big losers would be American consumers. Estimates are that this amendment could cost consumers as much as \$20 billion.

On top of that, this amendment would gut the entire bill, and it would jeopardize an important part of American antitrust law.

In his opening statement my colleague claimed that this bill would prevent a high-quality stereo manufacturer from imposing proper display and service requirements on retailers who sell its product or refusing to sell to those who do not. That is simply inaccurate. As with current law, this bill would continue to allow manufacturers to retain full control, except for price fixing, over how their products are displayed and how their products are serviced.

What this radical amendment would do would be to allow big business to strong-arm entrepreneurs, forcing them to raise prices to the detriment of consumers. That is precisely the impact that this amendment would have.

This amendment is presented in a very modest, moderate garb, but in fact it is a far-reaching amendment with extremely deleterious consequences to the American consumer.

Mr. Chairman, we are already suffering through a recession that the White House refuses to acknowledge. To legislate price fixing, as this amendment would do, when average citizens are scrimping and saving, is a slap in the face to every American consumer. This amendment would require a discount retailer who has lost his supplies, and maybe his entire business, due to a price fixing conspiracy, to show that the conspirators had market power, to show that they had market power, a subjective test, just to get a day in court.

Put forward in the name of small business, the amendment would really shelter illegal price fixing agreements by most members of the Fortune 500. This is not small business that would be protected, this is Phillips, this is Motorola, this is Sony, this is Matsushita, this is Panasonic, this is Hitachi. These are the biggest companies abroad and at home who do business in America today under a subjective market power test.

I urge my colleague to reject this amendment for many many reasons, not the least of which is that it is worse than current Reagan era law. Under the administration of the past President and the current President, one would not even know that we have an antitrust division in the Department of Justice. Yet this amendment goes further toward gutting antitrust law than the last administration or the current administration does.

The amendment completely undermines the law covering a per se price fixing conspiracy. The idea behind the per se rule is that in a free economy prices should be set by contract between a buyer and a seller, not by outside forces.

Price fixing so undermines the free enterprise economy that the Supreme Court has reiterated time and time again that it is automatically illegal.

Proponents even claim that the Campbell amendment is procompetitive. That is another dangerous myth about this amendment.

Ironically, Mr. Chairman, just when the Soviet Union and its allies are moving to decontrol their economy, this proposed amendment would be a big step toward price control in our economy, price control not by the government, but by private interests.

The proposed market power defense adopts one of the main provisions of the rule of reason as advanced by the so-called Chicago school theory of economics. I believe it is well known to my colleagues that these theoretical economists, not all economists or even most economists, are apologists for if not advocates of price fixing, unfettered takeovers, and merger mania. They believe that price fixing benefits people like my constituents by raising prices.

Under this theory, higher prices are assumed and argued to be better for consumers because they promote better service. That is simply ridiculous.

The CHAIRMAN. The time of the gentleman from California [Mr. LEVINE] has expired.

(By unanimous consent Mr. LEVINE of California was allowed to proceed for 1 additional minute.)

Mr. LEVINE of California. Mr. Chairman, I take a back seat to nobody in my concern about America's competitiveness, and I believe we perhaps ought to be making some modifications of our antitrust laws in certain areas in terms of ensuring America's ability to compete in certain areas of competitiveness. But we should not allow the issue of American competitiveness to become a Trojan horse for dismantling the antitrust laws of this country.

Unfortunately, that is what this amendment would do.

What about the consumer who wants to make ends meet? Should not he or she be able to buy from the discounter

or local store who may provide equal or better, but in any event adequate service? And what about the entrepreneur who wants to cut prices because he has found a better way or a less expensive way to market a product? Yet this amendment says that the discount shopper, the local mom and pop store, and the smaller entrepreneur is simply out of luck.

I say we should make the American economic system work for all consumers, not just those who can afford to shop on Rodeo Drive or on Fifth Avenue.

Vigorous price competition is the backbone of America's economy. It produces the most goods and services at the lowest cost. It is the American way. I believe in it and we in the Congress should support it, and I urge my colleagues to support the bill and to defeat this amendment.

Mr. GLICKMAN. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, the gentleman from California [Mr. CAMPBELL] is one of the brightest legal minds in the Congress. He is misguided on this amendment. However, it does not take away from the love we have for him personally, and I would like to engage him in a colloquy in a minute.

But the Supreme Court has held repeatedly that price fixing is bad. Not price fixing only by big folks, price fixing by anybody. It is a per se rule. No exemptions. It is kind of like in the securities laws we rule that insider trading is bad, even if it is one share of stock or 1 million shares of stock. It is bad; one cannot do it.

As a concept we have not permitted price fixing. This amendment would allow some modification and allow some price fixing under some circumstances, at least that is my interpretation. But even if we consider some modification to the price-fixing rules, the gentleman from California has not done it. His amendment is so vague that it will require courts of incredible magnitude and numbers and locations to define it. Here is what he says, and then I would like to engage him in a colloquy. He says:

It shall be a defense for price fixing if the defendant was so small in the relevant market as to lack market power.

What does that mean? I would ask the gentleman from California, does that mean that let us say the Dillard's Department Store in Wichita, KS, which has 12 percent of the market for men's suits and ladies' dresses is too small in that relative market to have that kind of market power?

Mr. CAMPBELL of California. Mr. Chairman, will the gentleman yield?

Mr. GLICKMAN. I am glad to yield to the gentleman from California.

Mr. CAMPBELL of California. Mr. Chairman, I thank the gentleman for

yielding and appreciate his kindness. His warm heart overcomes the difference we have in our minds.

As to the quotation though, my friend from Kansas mistakenly quoted my amendment. It does not say it is a defense to price fixing. It says it is a defense to an action described in this section, which is important because it is only these new cases to which my amendment would apply.

Responding to your point, it depends whether the average time and effort to travel exceeds the cost of the item one is seeking to buy.

Mr. GLICKMAN. It sounds like a mathematical formula almost.

Mr. CAMPBELL of California. Not quite, but we have 100 years' experience with courts determining markets, and what they tend to do is to ask just that question. So, for example, when I ran the Bureau of Competition at the FTC we sometimes defined markets as parts of one city, because the cost of going beyond that was too high. For example, retail gasoline. On the other hand, if you are buying a very expensive item, the market may be the world, or if you are a huge purchaser, the market may be the world.

Mr. GLICKMAN. That even concerns me more, because this area of law, price fixing, is so critical, so much a kernel of the antitrust laws that what the gentleman is allowing is the Federal judiciary to have an incredible amount of authority to further chip away at the issue of price fixing by all sorts of very lengthy determinations of market power in an area where the consumer deserves the benefit of the doubt.

Mr. CAMPBELL of California. Will the gentleman yield further?

Mr. GLICKMAN. I am glad to yield to the gentleman from California.

Mr. CAMPBELL of California. Only in those areas covered by this new law. As of the date today, vertical price fixing would apply to all forms untouched by my amendment. But if we are going to make it easier to bring a lawsuit against somebody by reason of today's bill, then I think they should be allowed to defend by saying they are not large enough to have any effect on the market.

□ 1410

Mr. GLICKMAN. We are going to make it easier, only we are going to go back to where the law was before the Justice Departments of the last several years, and some court decisions have changed the law.

Mr. CAMPBELL of California. If the gentleman will yield further, it was not the Department of Justice. It was the Supreme Court, 8 to 0, including Brennan and Marshall in Monsanto. Even so, it is at least my opinion that Monsanto correctly stated the existing law. It did not move things.

Incidentally, I would agree with the gentleman that Sharp moved things. I have always been candid on that.

Mr. GLICKMAN. I appreciate the colloquy. The only point I would make is it would look to me as if every major computer manufacturer, every full-price retailer could take advantage of this particular loophole, and I would urge my colleagues to recognize that if you adopt the Campbell amendment, at a minimum, you will be creating a plethora, an abundance, of legislation in the country that will make a lot of lawyers very rich but will not aid consumers at all.

Mr. PORTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to commend the Committee on the Judiciary and the gentleman from Texas for bringing this important legislation to the floor.

H.R. 1470, which I have cosponsored, will help ensure the American consumer benefits from an open, fair, and free-market economy. Price competition is paramount to any market-oriented economy, and this fact combined with the antitrust laws that preserve it has been the cornerstone of my party.

I am aware of the concern that the bill in its particulars is overbroad and would effectively expand the definition of price fixing and thereby threaten some legitimate business practices. There is concern that a manufacturer or distributor might be exposed to liability for terminating a retailer's contracts for reasons unrelated to price.

While I understand these concerns well, Mr. Chairman, I am also extremely troubled by the current Justice Department interpretation of the law which, in my opinion, has resulted in grossly inadequate effort to address situations of clear vertical price fixing. Such price-fixing practices are a plain abrogation of the principle of fair competition, and the Justice Department's approach to this matter, in my view, has been wholly unsatisfactory.

Mr. Chairman, I might say that I believe the antitrust policies of recent years have been a disaster for our economy, have burdened our business community with untold amounts of debt for no real benefit that is discernible.

I am wary of amendments aimed at weakening the strengths of H.R. 1470 in this regard. The practice of fixing prices is per se illegal under both legislation and the current law.

The Campbell amendment, while it purports to be a small-business amendment, would only serve to muddy the waters and provide another loophole for attorneys.

It seems to me whether market power is interpreted as 5 percent or 40 percent of market share would require extensive litigation, as the gentleman from Kansas has just said, and in time

that could end up sheltering illegal price fixing by Minolta or by Mitsubishi that could hardly be defined as small businesses.

The Price Fixing Prevention Act is a reasonable, measured, and needed response to Supreme Court decisions that have narrowed the definition of illegal price-fixing arrangements and provided shelter to those who would violate our antitrust laws.

Mr. Chairman, it has been said that this bill would encourage frivolous lawsuits. As a vocal advocate of liability caps and tort reform, I would not be able to stand here and support legislation that I thought would lead to an explosion of new lawsuits. The provisions of 1470 allowing a judge or jury to hear allegations of price fixing require the plaintiff to demonstrate a causal relationship between the actions of a competitor and their resulting termination.

The difficulty in proving the existence of such a relationship will discourage all but the most blatant cases from going to trial. The absence of such correction, however, would provide an explosion of antitrust violations by companies finding shelter under the Supreme Court decision in Monsanto and Sharp.

Contrary to the claims of the bill's opponents, H.R. 1470 will not adversely affect the rights of manufacturers to impose and enforce service requirements or other nonprice-related conditions on those who bring the products to market.

Mr. Chairman, I find that this claim is particularly groundless. This legislation merely clarifies and reverses recent Supreme Court decisions that have obfuscated legitimate and effective antitrust laws. It does not create rights that never existed, nor does it limit the free and unilateral right of a company to do business with whomever it chooses. It only prohibits conspiracies to drive competitors out of the market.

Mr. Chairman, H.R. 1470 is procompetition and proconsumer. There is no room for loopholes in the law which allow restriction of free trade.

This bill is a measured legislative effort to assure legitimate lawsuits involving anticompetitive resale price maintenance agreements will receive fair hearings on the merits.

I support the legislation.

Mr. SYNAR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the Campbell amendment.

If I could just take a minute on an aside, for all those people watching this debate on the floor today, particularly those law students who will be taking the bar in the immediate future, or those students who may be taking courses in this area, let me strongly suggest as they write their

answers to questions in this area that they be very careful that when they are debating that issue such as this, a per se violation in price fixing, with respect to section 1 of the Sherman Act, that they do not use references throughout their answers with respect to the Clayton Act, which is section 7, because we have not really been talking about the same thing as we have been watching the debate.

But for those of us and for those of us who have a responsibility to try to put this in terms where the nonlawyer citizen can understand it, let me say that what you have been listening to here the last couple of minutes is basically a theory on proposed market power and whether or not the market-power defense to price fixing can be deterred by "the market power that one has on that impact."

Now, call me crazy, call me a conservative, but I always believed that price competition leads to price cutting, and, therefore, that leads to lower prices.

I agree with the last 75 years of the Supreme Court which have reaffirmed time and time again that price fixing is price fixing, and that is illegal.

Some of my colleagues are going to argue today that some price fixing can be a healthy thing for the economy and, therefore, should be judged with lax rules. Well, if you follow that logic, then price fixing is beneficial, because it brings higher prices. And how in the heck can that be better for consumers?

I reject that argument. I think my colleagues will reject that argument as they did last year.

Now, what is wrong with this market-power test that the gentleman from California brings us today? Well, first of all, no one even knows what this test is. This amendment does not tell us.

Combined with the existing precedent, this amendment could pave a way for companies like Exxon, Sony, GE, Du Pont, Philip Morris, and literally half the Fortune 500 could make claims that they lack the market power in many markets in which they operate.

Since the gentleman from California will not listen to the Supreme Court, since he will not listen to the Justice Department, maybe he will listen to Judge Robert Bork, who often led the fight for conservatives on the issue of antitrust issues. And he has rejected the market-power test as too extreme.

As he put it:

If small parties were allowed to prove lack of market power, all parties would have the right, thus introducing the enormous complexity of market definition into every price-fixing case.

To my colleagues on the floor and who will be coming over shortly for this vote, the centerpiece of this legislation is the affirmation of the per se rule. The Campbell amendment would, in effect, say that price fixing is only

per se when there is market power. Not even the Supreme Court of the United States takes this extreme position.

This amendment is worse than current law, and I ask for it to be defeated.

Mr. CAMPBELL of California. Mr. Chairman, will the gentleman yield?

Mr. SYNAR. I am happy to yield to the gentleman from California.

Mr. CAMPBELL of California. Mr. Chairman, is the gentleman aware of the quotation from Judge Bork to which he alluded in "The Antitrust Paradox" is taken from the chapter dealing with horizontal price fixing, not vertical?

Mr. SYNAR. There is no difference in this gentleman's opinion in that citing and the price fixing that we are talking about.

Mr. CAMPBELL of California. I take it the gentleman was not aware.

Second, in the gentleman's discussion, the previous speaker has referred to me as ignoring the Supreme Court. It is my understanding that this statute reverses the Supreme Court in Monsanto. Is that the gentleman's understanding?

Mr. SYNAR. That is not the gentleman's understanding.

Mr. CAMPBELL of California. I thank the gentleman for yielding.

□ 1420

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. CAMPBELL].

The question was taken; and the Chairman announced that the yeas appeared to have it.

RECORDED VOTE

Mr. CAMPBELL of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—yeas 218, noes 195, not voting 20, as follows:

[Roll No. 304]

AYES—218

Alexander	Coleman (MO)	Franks (CT)
Allard	Combest	Galleghy
Anthony	Condit	Gallo
Archer	Coughlin	Gekas
Armey	Cox (CA)	Gerens
Baker	Cramer	Gilchrest
Ballengier	Crane	Gillmor
Barrett	Cunningham	Gingrich
Barton	Dannemeyer	Goodling
Bateman	Davis	Goss
Bereuter	DeLay	Gradison
Billrakis	Derrick	Grandy
Billey	Dickinson	Green
Boehlert	Dooley	Gunderson
Boehner	Doolittle	Hall (TX)
Brewster	Dorgan (ND)	Hamilton
Browder	Dornan (CA)	Hammerschmidt
Bunning	Dreier	Hancock
Burton	Duncan	Hansen
Byron	Edwards (OK)	Hastert
Callahan	Emerson	Hefley
Camp	Engel	Henry
Campbell (CA)	English	Herger
Campbell (CO)	Espy	Hobson
Carpenter	Ewing	Horn
Chandler	Fawell	Horton
Clinger	Fields	Houghton
Coble	Fish	Hubbard

Hunter	Morella	Sensenbrenner
Hutto	Morrison	Shaw
Inhofe	Murphy	Shays
Ireland	Myers	Stuster
James	Neal (NC)	Sisisky
Johnson (CT)	Nichols	Skeen
Johnson (SD)	Nussle	Skelton
Johnson (TX)	Olin	Smith (NJ)
Kasich	Orton	Smith (OR)
Klug	Owens (UT)	Smith (TX)
Kolbe	Oxley	Snowe
Kolter	Packard	Solomon
Kyl	Parker	Spence
Lagomarsino	Patterson	Stallings
LaRocco	Paxon	Stearns
Laughlin	Payne (VA)	Stenholm
Leach	Penny	Stump
Lehman (CA)	Peterson (FL)	Sundquist
Lent	Peterson (MN)	Tallon
Lewis (CA)	Petri	Tanner
Lewis (FL)	Pickett	Tauzin
Lightfoot	Pursell	Taylor (MS)
Livingston	Quillen	Taylor (NC)
Lloyd	Ramstad	Thomas (CA)
Long	Ravenel	Thomas (GA)
Lowery (CA)	Ray	Thomas (WY)
Luken	Regula	Thornton
Machtley	Rhodes	Upton
Marlenee	Ridge	Valentine
Martin	Riggs	Vander Jagt
McCandless	Ritter	Visclosky
McCollum	Roberts	Volkmer
McCrery	Roemer	Vucanovich
McEwen	Rogers	Walker
McGrath	Rohrabacher	Walsh
McMillan (NC)	Ros-Lehtinen	Weber
McMillen (MD)	Roth	Weldon
Meyers	Roukema	Williams
Michel	Rowland	Wolf
Miller (OH)	Santorum	Wylie
Miller (WA)	Sarpalius	Young (AK)
Molinari	Saxton	Young (FL)
Montgomery	Schaefer	Zeliff
Moorhead	Schiff	Zimmer
Moran	Schulze	

NOES—195

Abercrombie	Dwyer	LaFalce
Ackerman	Dymally	Lancaster
Anderson	Early	Lantos
Andrews (ME)	Eckart	Lehman (FL)
Andrews (NJ)	Edwards (CA)	Levin (MI)
Andrews (TX)	Edwards (TX)	Levine (CA)
Annuzio	Erdreich	Lewis (GA)
Applegate	Evans	Lipinski
Aspin	Fasell	Lowey (NY)
Atkins	Fazio	Manton
AuCoin	Feighan	Markey
Bellenson	Flake	Martinez
Bennett	Frank (MA)	Matsui
Bentley	Frost	Mavroules
Berman	Gaydos	Mazzoli
Bevill	Gejdenson	McCloskey
Bilbray	Gephardt	McCurdy
Bonior	Gibbons	McDade
Borski	Gilman	McDermott
Boucher	Glickman	McHugh
Brooks	Gonzalez	McNulty
Brown	Gordon	Mfume
Bruce	Guarini	Miller (CA)
Bryant	Hall (OH)	Mineta
Bustamante	Harris	Mink
Cardin	Hatcher	Moakley
Carr	Hayes (IL)	Mollohan
Clay	Hefner	Moody
Clement	Hertel	Murtha
Coleman (TX)	Hoagland	Nagle
Collins (IL)	Hochbrueckner	Natcher
Collins (MI)	Hoyer	Neal (MA)
Conyers	Hughes	Nowak
Cooper	Hyde	Oakar
Costello	Jacobs	Oberstar
Cox (IL)	Jefferson	Obey
Coyne	Johnston	Olver
Darden	Jones (GA)	Ortiz
de la Garza	Jones (NC)	Owens (NY)
DeFazio	Jontz	Pallone
DeLauro	Kanjorski	Panetta
Dellums	Kaptur	Pastor
Dicks	Kennedy	Payne (NJ)
Dingell	Kennelly	Pease
Dixon	Kildee	Pelosi
Donnelly	Kileczka	Perkins
Downey	Kopetski	Pickle
Durbin	Kostmayer	Porter

Poshard	Schroeder	Torres
Price	Schumer	Torricelli
Rahall	Serrano	Towns
Rangel	Sharp	Trafficant
Reed	Sikorski	Traxler
Richardson	Skaggs	Unsoeld
Rinaldo	Slattery	Vento
Roe	Slaughter (NY)	Waters
Rose	Smith (IA)	Waxman
Rostenkowski	Solarz	Weiss
Roybal	Spratt	Wheat
Russo	Staggers	Whitten
Sabo	Stark	Wise
Sanders	Studds	Wolpe
Sangmeister	Swett	Wyden
Sawyer	Swift	Yates
Scheuer	Synar	Yatron

NOT VOTING—20

Bacchus	Ford (TN)	Savage
Barnard	Hayes (LA)	Slaughter (VA)
Boxer	Holloway	Smith (FL)
Broomfield	Hopkins	Stokes
Chapman	Huckaby	Washington
Foglietta	Jenkins	Wilson
Ford (MI)	Mrazek	

□ 1439

The Clerk announced the following pair:

On this vote:

Mr. Hayes of Louisiana for, with Mr. Smith of Florida against.

Mr. MARKEY changed his vote from "yea" to "nay."

Messrs. SKELTON, ALEXANDER and McMILLEN of Maryland changed their vote from "nay" to "yea."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1440

The CHAIRMAN. Are there any other amendments to section 2 of the bill?

If not, the Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of such Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

The CHAIRMAN. Are there any amendments to section 3 of the bill?

If not, the Clerk will designate section 4.

The text of section 4 is as follows:

SEC. 4. RULE-OF-REASON STANDARD.

(a) IN GENERAL.—Nothing in this Act shall affect the application of the rule-of-reason standard to vertical location clauses or vertical territorial restraints under the anti-trust laws.

(b) DEFINITION.—For purposes of subsection (a), the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

The CHAIRMAN. Are there any amendments to section 4 of the bill?

If not, the Clerk will designate section 5.

The text of section 5 is as follows:

SEC. 5. APPLICABILITY.

With the exception of the first sentence in section 2(b), section 2 of this Act shall not apply to civil actions commenced before the date of enactment of this Act.

The CHAIRMAN. Are there any amendments to section 5?

If not, under the rule the Committee rises.

Accordingly the Committee rose, and the Speaker pro tempore (Mr. MCNULTY) having assumed the chair, Mr. SLATTERY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1470) to establish evidentiary standards for Federal civil antitrust claims based on resale price fixing, pursuant to House Resolution 241, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The bill was ordered to be engrossed and read a third time, and was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. BROOKS. Mr. Speaker, pursuant to the provisions of House Resolution 241, I call up from the Speaker's table the Senate bill (S. 429) to amend the Sherman Act regarding retail competition, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 429

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Consumer Protection Against Price-Fixing Act of 1991".

SEC. 2. The Congress finds that—

(1) consumer welfare is greatly enhanced by an ability to purchase goods and services at lower prices as a result of vigorous price competition;

(2) vertical price restraints generally have an adverse impact on competition that results in higher consumer prices;

(3) recent court decisions have so narrowly construed the laws against vertical price restraints that consumer welfare has been put in jeopardy; and

(4) it is necessary to enact legislation that protects the interests of consumers in vigorous price competition while recognizing the needs of manufacturers and others to maintain reasonable service, quality and safety standards.

SEC. 3. The Sherman Act is amended by redesignating section 8 and any references to section 8 as section 9 and by inserting between section 7 and section 9, as herein redesignated, the following new section:

"SEC. 8. (a)(1)(A) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination or conspiracy to set, change, or maintain prices (other than a maximum price), if pursuant to the Federal Rules of Civil Procedure the court finds that there is sufficient evidence, direct or circumstantial, from which a trier of fact could reasonably conclude that a person who sells a good or service to the claimant for re-

sale entered into a contract, combination, or conspiracy with a competitor of such claimant to curtail or eliminate price competition by such claimant in the resale of such good or service, then the court shall permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section.

"(B) For purposes of paragraph (1), the court shall find the existence of 'sufficient evidence' that a person who sells a good or service entered into a contract, combination, or conspiracy if the claimant presents evidence that such person—

"(i) received from a competitor of the claimant an express or reasonably implied request or demand that the seller takes steps to curtail or eliminate price competition by the claimant in the resale of such good or service, and

"(ii) terminated the claimant as buyer of such good or service for resale or refused to continue to supply to the claimant some or all of such goods or services requested by the claimant and such request or demand was the major cause of such termination or refusal to continue to supply.

"(C) For purposes of subparagraph (B)(ii), no such request or demand shall be deemed to constitute the major cause of such termination or refusal to continue to supply unless, at a minimum, there is evidence that such person—

"(i) expressly or impliedly acquiesced to the request or demand, or

"(ii) expressly or impliedly threatened, or took actions, in addition to the termination or refusal to continue to supply at issue in the case, to curtail or eliminate price competition by the claimant or others engaged in the resale of goods or services.

"(D) A decision by such person to alter, wholly or in part, its distribution policy through adoption of exclusive distributor outlets or vertical location, customer or territorial clauses shall not constitute an action to curtail or eliminate price competition for purposes of subparagraph (C)(ii).

"(2) In making its determination with respect to the existence of a contract, combination or conspiracy, the court shall consider evidence in rebuttal supporting any actual, bona fide nonprice business justification for the termination of the claimant or the refusal to continue to supply the claimant.

"(3) The court shall not permit the trier of fact to consider whether such person and such competitor engaged in concerted action to set, change, or maintain prices for such goods or service in violation of such section if the court determines that the trier of fact could only find that such person and such competitor engaged in concerted action by making inferences which are implausible.

"(b) In any civil action based on section 1 or 3 of this Act, including an action brought by the United States or by a State attorney general, or by the Federal Trade Commission under section 5 of the Federal Trade Commission Act, which alleges a contract, combination, or conspiracy to set, change or maintain prices, the fact that the seller of a good or service and the purchaser of a good or service entered into an agreement to set, change or maintain the resale price of a good or service shall be sufficient to constitute a violation of such section, except that this section shall not apply when the agreement to set, change, or maintain the resale price of a good or service in an agreement to set, change, or maintain the maximum resale

price of a good or service. Such maximum resale price agreements shall not be deemed illegal per se; such agreements shall be judged on the basis of their reasonableness, taking into account all relevant factors affecting competition in the relevant market for the good or service that is the subject of the agreement. An agreement between the seller of a good or service and the purchaser of a good or service to terminate another purchaser as a dealer or to refuse to continue to supply such other purchaser shall constitute a violation of such section if such purchaser's discount pricing was the major cause of such termination or refusal to continue to supply, whether or not a specific price or price level is agreed upon."

SEC. 4. Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of that Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 5. Nothing in this Act shall affect the application of the rule of reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws, or the existing state of law with respect to other types of nonprice vertical restraints.

MOTION OFFERED BY MR. BROOKS

Mr. BROOKS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BROOKS moves to strike all after the enacting clause of the Senate bill, S. 429, and to insert in lieu thereof the text of H.R. 1470, as passed, as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Price Fixing Prevention Act of 1991".

SEC. 2. EVIDENTIARY STANDARDS IN FEDERAL CIVIL ANTI-TRUST ACTIONS RELATING TO PRICE FIXING.

(a) In any civil action based on a claim arising under section 1 or 3 of the Sherman Act (15 U.S.C. 1, 3) and alleging a contract, combination, or conspiracy to set, change, or maintain prices (other than a maximum price), evidence that a person who sells a good or service to the claimant for resale—

(1) received from a competitor of the claimant a communication regarding price competition by the claimant in the resale of a good or service, and

(2) in response to such communication terminated the claimant as a buyer of a good or service for resale, or refused to supply to the claimant some or all of such goods or services requested by the claimant,

shall be sufficient to raise the inference that such person and such competitor engaged in concerted action to set, change, or maintain prices for such good or service in violation of such section. For purposes of this subsection, a termination or a refusal to supply is in response to a communication if such communication is a substantial contributing cause of such termination or refusal to supply. Nothing herein shall preclude the court from entering judgment in favor of the defendant, at trial or prior thereto, if the court determines on the basis of all the evidence and pleadings submitted by the parties, in accordance with the Federal Rules of Civil Procedure and the requirements of this subsection, that no such inference of concerted action can reasonably be drawn by a trier of fact.

(b) In any civil action based on a claim arising under section 1 or 3 of the Sherman Act (15 U.S.C. 1, 3), and alleging a contract,

combination, or conspiracy to set, change, or maintain prices, the fact that the seller of a good or service and the purchaser of such good or service entered into an agreement to set, change, or maintain the price (other than a maximum price) of such good or service for resale shall be sufficient to constitute a violation of such section. An agreement between the seller of a good or service and the purchaser of such good or service to terminate another purchaser as a dealer or to refuse to supply such other purchaser because of that purchaser's pricing policies shall constitute a violation of such section, whether or not a specific price or price level is agreed upon.

(c) It shall be a defense to an action described in this section that the defendant was so small in the relevant market as to lack market power.

SEC. 3. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to change the requirement of the Sherman Act that a violation of section 1 or 3 of such Act may only be found upon a determination that the defendant entered into an illegal contract, combination, or conspiracy.

SEC. 4. RULE-OF-REASON STANDARD.

(a) IN GENERAL.—Nothing in this Act shall affect the application of the rule-of-reason standard to vertical location clauses or vertical territorial restraints under the antitrust laws.

(b) DEFINITION.—For purposes of subsection (a), the term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to establish evidentiary standards for Federal civil antitrust claims based on resale price fixing."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 1470) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 429, PRICE FIXING PREVENTION ACT OF 1991

Mr. BROOKS. Mr. Speaker, pursuant to House Resolution 241, I offer a privileged motion.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. BROOKS moves that the House insist on its amendment to the Senate bill, S. 429 and request a conference with the Senate thereon.

The motion was agreed to.

The SPEAKER pro tempore. Pursuant to House Resolution 241, the Chair appoints the following conferees: Messrs. BROOKS, EDWARDS of California, SYNAR, FISH, and CAMPBELL of California.

Without objection, the Chair reserves the right to appoint additional conferees.

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 2797

Mr. DORNAN of California. Mr. Speaker, I cosponsored a bill without

properly researching it. I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 2797.

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

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1028

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 1028.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida.

There was no objection.

□ 1450

DEFENSE PRODUCTION ACT AMENDMENTS OF 1991

Mr. CARPER. Mr. Speaker, pursuant to the provisions of House Resolution 231, I move to take from the Speaker's table the Senate bill (S. 347) to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 347

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Defense Production Act Amendments of 1991".

(b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- TITLE I—AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950**
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TITLE I—AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950

PART A—DECLARATION OF POLICY

SEC. 101. DECLARATION OF POLICY.

Section 2 of the Defense Production Act of 1950 (50 U.S.C. App. 2062) is amended to read as follows:

"SEC. 2. DECLARATION OF POLICY.

"(a)(1) The vitality of the industrial and technology base of the United States is a foundation of national security. It provides

the industrial and technological capabilities employed to meet national defense requirements, in peacetime and in time of national emergency. In peacetime, the health of the industrial and technological base contributes to the technological superiority of our defense equipment, which is a cornerstone of our national security strategy, and the efficiency with which defense equipment is developed and produced. In times of crisis, a healthy industrial base will be able to effectively provide the graduated response needed to effectively meet the demands of the emergency.

"(2) To meet these requirements, this Act affords to the President an array of authorities to shape defense preparedness programs and to take appropriate steps to maintain and enhance the defense industrial and technological base.

"(b)(1) In view of continuing international problems, the Nation's demonstrated reliance on imports of materials and components, and the need for measures to reduce defense production lead times and bottlenecks, and in order to provide for the national defense and national security, our defense mobilization preparedness effort continues to require the development of preparedness programs, domestic defense industrial base improvement measures, as well as provision for a graduated response to any threatening international or military situation, and the expansion of domestic productive capacity beyond the levels needed to meet the civilian demand. Also required is some diversion of certain materials and facilities from civilian use to military and related purposes.

"(2) These activities are needed in order to improve domestic defense industrial base efficiency and responsiveness, to reduce the time required for industrial mobilization in the event of an attack on the United States or to respond to actions occurring outside the United States which could result in the termination or reduction of the availability of strategic and critical materials, including energy, and which could adversely affect national defense preparedness of the United States. In order to ensure national defense preparedness, which is essential to national security, it is also necessary and appropriate to assure the availability of domestic energy supplies for national defense needs.

"(c)(1) In order to ensure productive capacity in the event of an attack on the United States, it is the policy of the Congress to encourage the geographical dispersal of industrial facilities in the United States to discourage the concentration of such productive facilities within limited geographical areas which are vulnerable to attack by an enemy of the United States. To ensure that essential mobilization requirements are met, consideration should also be given to stockpiling strategic materials to the extent that such stockpiling is economical and feasible.

"(2) In the construction of any Government-owned industrial facility, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this or any other Act, each department and agency of the executive branch shall apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographical dispersal of such facilities in the interest of national defense. However, nothing in this

paragraph shall preclude the use of existing industrial facilities.

"(3) To ensure the adequacy of productive capacity and supply, executive agencies and departments responsible for defense acquisition shall continuously assess the capability of the domestic defense industrial base to satisfy peacetime requirements as well as increased mobilization production requirements. Such assessments shall specifically evaluate the availability of adequate production sources, including subcontractors and suppliers, materials, and skilled labor, and professional and technical personnel.

"(4) It is the policy of the Congress that plans and programs to carry out this declaration of policy shall be undertaken with due consideration for promoting efficiency and competition.

"(5) It is also necessary to recognize that—
"(A) the domestic defense industrial base is a component part of the core industrial capacity of the Nation; and

"(B) much of the industrial capacity which is relied upon by the Federal Government for military production and other defense-related purposes is deeply and directly influenced by—

"(i) the overall competitiveness of the United States industrial economy; and

"(ii) the ability of United States industry, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve that competitive edge in the future, with respect to military and civilian production.

"(6)(A) The domestic defense industrial base is developing a growing dependency on foreign sources for critical components and materials used in manufacturing and assembling major weapons systems for our national defense.

"(B) This dependence is threatening the capability of many critical industries to respond rapidly to defense production needs in the event of war or other hostilities or diplomatic confrontation.

"(C) The inability of United States industry, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair our ability to sustain our Armed Forces in combat for more than a few months.

"(D) In the event our Armed Forces must face an adversary with a numerical advantage, in the context of a conventional war, it is imperative to preserve and strengthen the industrial and technological capabilities of the United States."

PART B—AMENDMENTS TO TITLE I OF THE DEFENSE PRODUCTION ACT

SEC. 111. STRENGTHENING OF DOMESTIC CAPABILITY.

Title I of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.) is amended by adding at the end the following new section:

"SEC. 107. STRENGTHENING OF DOMESTIC CAPABILITY.

"(a) IN GENERAL.—To assure availability of critical components and critical technology items essential for the execution of the national security strategy of the United States in peacetime and during graduated mobilization, the President shall take action to implement the requirements of subsection (b)(3) within a 5-year period.

"(b) DOMESTIC PRODUCTION OF CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.—

"(1) ESSENTIAL WEAPON SYSTEMS.—

"(A) DESIGNATION.—The President, acting through the Secretary of Defense, shall re-

view the inventory of weapon systems and defense equipment and designate as an essential weapon system those items deemed appropriate.

"(B) MAINTENANCE OF LIST.—The President shall maintain a list of such weapon systems and other items of military equipment.

"(2) CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.—

"(A) DESIGNATION.—The President, acting through the Secretary of Defense, shall identify critical components, and critical technology items, including those relating to essential weapon systems, utilizing information from the Defense Industrial Base Information System established pursuant to section 722(a) of this Act and other appropriate sources.

"(B) MAINTENANCE OF LIST.—The President shall cause an unclassified list of critical or emerging technologies to be maintained and published at least annually in the Federal Register.

"(3) RELIANCE ON DOMESTIC SOURCES.—

"(A) IN GENERAL.—To assure adequate domestic sources for critical components and critical technology items to meet national security requirements, including those relating to essential weapon systems, the President is authorized to limit procurement of such items to domestic sources.

"(B) AUTHORITY.—The authority under subparagraph (A) may be exercised pursuant to—

"(i) section 2304(c)(3) of title 10, United States Code;

"(ii) section 303(c)(3) of the Federal Property and Administrative Services Act of 1949; or

"(iii) any other provision of law (including section 201 of the Defense Production Act Amendments of 1990).

"(4) CRITICAL INDUSTRIES FOR NATIONAL SECURITY.—The President shall cause—

"(A) a list to be maintained containing any industry (or industry sector) identified or designated as a critical industry for national security; and

"(B) an unclassified version of such list to be published at least annually in the Federal Register.

"(c) USE OF TITLE III AUTHORITIES TO DEVELOP DOMESTIC CAPACITY.—Pursuant to authorities provided by title III of this Act or any other provision of law, the President may provide appropriate incentives to develop, maintain, modernize, or expand the productive capacities of domestic sources for critical components, critical technology items, or industrial resources within an industry essential for national security.

"(d) ASSISTANCE FOR MODERNIZATION.—

"(1) MODERNIZATION OF EQUIPMENT.—Funds authorized under title III may be used to guarantee the purchase or lease of advanced manufacturing equipment, and any related service with respect to such equipment, for purposes of this Act.

"(2) SMALL BUSINESSES.—In providing any assistance pursuant to title III of this Act, the President shall accord a strong preference for projects to be undertaken by business concerns which are small business concerns, in accordance with section 3 of the Small Business Act, who perform as contractors or subcontractors in a critical industry for national security.

"(e) STOCKPILING OF CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.—The President, acting through the Secretary of Defense, is authorized to stockpile appropriate supplies of critical components and critical technology items to meet the needs of the Department of Defense and the pro-

duction needs of firms furnishing essential weapon systems to the Department during peacetime and various stages of graduated mobilization, whenever it is determined that necessary quantities of such items cannot be obtained from domestic sources.

"(f) REPORT.—

"(1) IN GENERAL.—The President shall transmit to the Congress by January 31 of each odd-numbered year a report on actions taken to preserve and revitalize the domestic defense industrial base, as described in paragraph (2).

"(2) CONTENT.—The report required by paragraph (1) shall contain, in addition to such matters as the President deems appropriate—

"(A) a detailed description of the specific actions taken, or to be taken, to implement the requirements of—

"(i) paragraphs (1), (2), and (3) of subsection (b);

"(ii) subsection (c); and

"(iii) subsection (e); and

"(B) an assessment of the capability of the domestic defense industrial base to meet the requirements of various stages of a graduated mobilization for a period of 6 months.

"(g) COORDINATION WITH MEMORANDA OF UNDERSTANDING.—

"(1) QUALIFICATION FOR PERMITTED EXCLUSION.—Actions taken pursuant to the authority of subsection (b)(3) shall qualify for any exclusion permitted by an existing memorandum of understanding (including memoranda relating to a specific project or the general conduct of procurement activities between the signatories) for the purposes of maintaining defense mobilization capabilities.

"(2) PRESIDENTIAL AUTHORITY.—The President is authorized, at his discretion, to seek to modify any existing or future memorandum of understanding to give effect to any action taken pursuant to the authority of subsection (b)(3)."

SEC. 112. LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.

Section 104 of the Defense Production Act of 1950 (50 U.S.C. App. 2074) is amended to read as follows:

"SEC. 104. LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.

"(a) WAGE OR PRICE CONTROLS.—No provision of this Act shall be interpreted as providing for the imposition of wage or price controls without the prior authorization of such action by a joint resolution of Congress.

"(b) CHEMICAL OR BIOLOGICAL WEAPONS.—No provision of this Act shall be exercised or interpreted to require action or compliance by any private person to assist in any way in the production of or other involvement in chemical or biological warfare capabilities except—

"(1) in time of war, or

"(2) in time of national emergency (A) as declared by joint resolution of Congress, or (B) upon the written authorization of the President, which power to authorize may not be delegated."

PART C—AMENDMENTS TO TITLE III OF THE DEFENSE PRODUCTION ACT

SEC. 121. EXPANDING THE REACH OF EXISTING AUTHORITIES UNDER TITLE III.

(a) GUARANTEE AUTHORITY.—Section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) is amended—

(1) in subsection (a)(1), by striking "to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense" and inserting "to expedite or expand production and

deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential for the national defense";

(2) by amending subsection (a)(3)(A) to read as follows:

"(A) the guaranteed contract or operation is for industrial resources or a critical technology item which is essential to the national defense";

(3) in subsection (a)(3)(B), by striking "the capability for the needed material or service" and inserting "the needed industrial resources or critical technology item";

(4) in subsection (e)(1)(A), by striking "Except during periods of national emergency declared by the Congress or the President" and inserting "Except as provided in subparagraph (D)";

(5) in subsection (e)(1)(C), by striking "\$25,000,000" and inserting "\$50,000,000"; and

(6) by adding at the end of subsection (e)(1) the following new subparagraph:

"(D) The requirements of subparagraphs (A), (B), and (C) may be waived during periods of national emergency declared by Congress or the President."

(b) **LOANS TO PRIVATE BUSINESS ENTERPRISES.**—Section 302 of the Defense Production Act of 1950 (50 U.S.C. App. 2092) is amended—

(1) in subsection (a), by striking "for the procurement of materials or the performance of services for the national defense" and inserting "for the procurement of industrial resources or a critical technology item for the national defense";

(2) in subsection (c)(1), by striking "No such loans may be made under this section, except during periods of national emergency declared by the Congress or the President" and inserting "Except as provided in paragraph (4), no loans may be made under this section";

(3) in subsection (c)(3), by striking "\$25,000,000" and inserting "\$50,000,000"; and

(4) in subsection (c), by adding at the end the following new paragraph:

"(4) The requirements of paragraphs (1), (2), and (3) of this subsection may be waived during periods of national emergency declared by Congress or the President."

(c) **PURCHASES AND PURCHASE COMMITMENTS.**—

(1) Section 303(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(a)) is amended to read as follows:

"(a)(1) To assist in carrying out the objectives of this Act, the President may make provision—

"(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale; and

"(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials.

"(2) Purchases for resale under this subsection shall not include that part of the supply of an agricultural commodity which is domestically produced except insofar as such domestically produced supply may be purchased for resale for industrial use or stockpiling.

"(3) No commodity purchased under this subsection shall be sold at less than—

"(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower, or

"(B) if no ceiling price has been established, the higher of—

"(i) the current domestic market price for such commodity; or

"(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation as provided in section 407 of the Agricultural Act of 1949.

"(4) No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than one year after the expiration of this section.

"(5) Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President determines that—

"(A) the industrial resource or critical technology item is essential to the national defense;

"(B) without Presidential action under authority of this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource or critical technology item in a timely manner;

"(C) purchases, purchase commitments, or other action pursuant to this section are the most cost-effective, expedient, and practical alternative method for meeting the need; and

"(D) the United States national defense demand for the industrial resource or critical technology item is equal to, or greater than the output of domestic industrial capability which the President reasonably determines to be available for national defense, including the output to be established through the purchase, purchase commitment, or other action.

"(6) Except as provided in paragraph (7), the President shall take no action under this section unless the industrial resource shortfall which such action is intended to correct has been identified in the Budget of the United States or amendments thereto, submitted to the Congress and accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of the preceding sentence. Any such action may be taken only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to the preceding sentence. If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, any such action or actions may be taken only if specifically authorized by law.

"(7) The requirements of paragraphs (1) through (6) may be waived during periods of national emergency declared by Congress or the President."

(2) Section 303(b) of such Act is amended by striking "September 30, 1995" and inserting "a date that is not more than 10 years from the date such purchase, purchase commitment, or sale was initially made".

SEC. 122. DEFENSE PRODUCTION ACT FUND.

Section 304 of the Defense Production Act of 1950 (50 U.S.C. App. 2094) is amended to read as follows:

"SEC. 304. DEFENSE PRODUCTION ACT FUND.

"(a) **ESTABLISHMENT OF FUND.**—There is established in the Treasury of the United States a separate fund to be known as the Defense Production Act Fund (hereafter in this section referred to as "the Fund").

"(b) **MONEYS IN FUND.**—The following moneys shall be credited to the Fund:

"(1) All moneys appropriated after October 19, 1990, for the Fund, as authorized by section 711(c).

"(2) All moneys received after October 19, 1990, on transactions entered into pursuant to section 303.

"(c) **USE OF FUND.**—The Fund shall be available to carry out the provisions and purposes of this title, subject to the limitations set forth in this Act and in appropriations Acts.

"(d) **DURATION OF FUND.**—Moneys in the Fund shall remain available until expended.

"(e) **FUND BALANCE.**—The Fund balance at the close of each fiscal year shall not exceed \$250,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If at the close of any fiscal year the Fund balance exceeds such amount, the amount in excess of \$250,000,000 shall be paid into the general fund of the Treasury.

"(f) **FUND MANAGER.**—The Secretary of the Treasury shall designate a Fund manager. The duties of the Fund manager shall include—

"(1) determining the liability of the Fund in accordance with subsection (g);

"(2) ensuring the visibility and accountability of transactions engaged in through the Fund to the Secretaries of Defense, Treasury, and Commerce, and to the Congress; and

"(3) reporting to Congress each year regarding fund activities during the previous fiscal year.

"(g) **LIABILITIES AGAINST FUND.**—

"(1) **IN GENERAL.**—When any agreement entered into pursuant to this title after December 31, 1990, imposes contingent liabilities upon the United States, such liability shall be considered an obligation against the Fund. The total amount of such obligations shall be determined for each fiscal year in accordance with paragraph (2).

"(2) **DETERMINATION OF LIABILITY.**—For purposes of paragraph (1), the total amount of obligations against the Fund is the amount which is equal to—

"(A) the aggregate outlays required by purchase or purchase commitment contracts or financing agreements; minus

"(B) the sum of—

"(i) the anticipated aggregate receipts from resale of materials purchased with moneys from the Fund; and

"(ii) the anticipated receipts from the direct sale of materials by the producer to customers.

"(3) **TREATMENT OF ANTICIPATED RECEIPTS AND REDUCTIONS.**—Anticipated receipts and anticipated reductions in purchase commitments shall be included under paragraph (2) only if a written plan for sale of materials has been developed, specifying probable customers, amount, time of the sales, and sales price."

SEC. 123. OFFSET POLICY.

Section 309 of the Defense Production Act of 1950 (50 U.S.C. App. 2099) is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by adding a new subsection (a) as follows:

"(a) **OFFSET POLICY.**—

"(1) **IN GENERAL.**—Recognizing that certain offsets for military exports are economically inefficient and market distorting, and mindful of the need to minimize the adverse effects of offsets in military exports while ensuring that the ability of United States firms to compete for military export sales is not undermined, it shall be the policy of the United States Government that—

"(A) no agency of the United States Government shall encourage, enter directly into, or commit United States firms to any offset

arrangement in connection with the sale of defense goods or services to foreign governments;

"(B) United States Government funds shall not be used to finance offsets in security assistance transactions except in accordance with policies and procedures that were in existence as of October 20, 1990;

"(C) nothing in this section shall prevent agencies of the United States Government from fulfilling obligations incurred through international agreements entered into before October 20, 1990; and

"(D) the decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved.

"(2) **PRESIDENTIAL APPROVAL OF EXCEPTIONS.**—The President may approve an exception to the policy stated by paragraph (1) after receiving the recommendation of the National Security Council.

"(3) **CONSULTATION.**—The President shall designate the Secretary of Defense, in coordination with the Secretary of State, to lead an interagency team to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. The President shall transmit an annual report on the results of these consultations to the Congress as part of the report required under subsection (b)."

SEC. 124. ANNUAL REPORT ON IMPACT OF OFFSETS.

Section 309 of the Defense Production Act of 1950 (50 U.S.C. App. 2099) (as amended by section 123 of this Act) is amended—

(1) in subsection (b) (as so redesignated by section 123(1) of this part)—

(A) by striking "(b) REPORT REQUIRED.—Not later" and inserting:

"(b) **ANNUAL REPORT ON IMPACT OF OFFSETS.**—

"(1) **REPORT REQUIRED.**—Not later";

(B) by striking the second sentence; and

(C) by adding at the end the following new paragraph:

"(2) **DUTIES OF THE SECRETARY OF COMMERCE.**—The Secretary of Commerce shall—

"(A) prepare the report required by paragraph (1);

"(B) consult with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, and the United States Trade Representative in connection with the preparation of such report; and

"(C) function as the President's Executive Agent for carrying out the requirements of this section.";

(2) by amending subsection (c) (as so redesignated by section 123(1) of this part) to read as follows:

"(c) **INTERAGENCY STUDIES AND RELATED DATA.**—

"(1) **PURPOSE OF REPORT.**—Each report required under subsection (b) shall identify the cumulative effects (indirect as well as direct) of offset agreements on—

"(A) the full range of domestic defense productive capability (with special attention to the firms serving as lower-tier subcontractors or suppliers); and

"(B) the domestic defense technology base as a consequence of the technology transfers associated with such offset agreements.

"(2) **USE OF DATA.**—Data developed or compiled by any agency while conducting any interagency study or other independent study or analysis shall be made available to the Secretary of Commerce to facilitate the Secretary in executing the Secretary's responsibilities with respect to trade offset and countertrade policy development."; and

(3) by adding at the end the following new subsections:

"(d) **NOTICE OF OFFSET AGREEMENTS.**—

"(1) **IN GENERAL.**—If a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset agreement exceeding \$5,000,000 in value, such firm shall furnish to the official designated in the regulations promulgated pursuant to paragraph (2) information concerning such sale.

"(2) **REGULATIONS.**—The information to be furnished shall be prescribed in regulations promulgated by the Secretary of Commerce. Such regulations shall provide protection from public disclosure for such information, unless public disclosure is subsequently specifically authorized by the firm furnishing the information. Nothing in this paragraph authorizes the withholding of such information from the Congress.

"(e) **CONTENTS OF REPORT.**—

"(1) **IN GENERAL.**—Each report under subsection (b) shall include—

"(A) a net assessment of the elements of the industrial base and technology base covered by the report;

"(B) recommendations for appropriate remedial action under the authorities provided by this Act, or other law or regulations;

"(C) a summary of the findings and recommendations of any interagency studies conducted during the reporting period under subsection (c);

"(D) a summary of offset arrangements concluded during the reporting period for which information has been furnished pursuant to subsection (d); and

"(E) a summary and analysis of any bilateral and multilateral negotiations relating to use of offsets completed during the reporting period.

"(2) **ALTERNATIVE FINDINGS OR RECOMMENDATIONS.**—Each report shall include any alternative findings or recommendations offered by any departmental Secretary, agency head, or the United States Trade Representative to the Secretary of Commerce.

"(f) **UTILIZATION OF ANNUAL REPORT IN NEGOTIATIONS.**—The findings and recommendations of the reports required by subsection (b), and any interagency reports and analyses shall be considered by representatives of the United States during bilateral and multilateral negotiations to minimize the adverse effects of offsets."

PART D—AMENDMENTS TO TITLE VII OF THE DEFENSE PRODUCTION ACT

SEC. 131. SMALL BUSINESS.

Section 701 of the Defense Production Act of 1950 (50 U.S.C. App. 2151) is amended to read as follows:

"SEC. 701. SMALL BUSINESS.

"(a) **PARTICIPATION.**—Small business concerns shall be given the maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to this Act.

"(b) **ADMINISTRATION OF ACT.**—In administering the programs, implementing regulations, policies, and procedures under this Act, requests, applications, or appeals from small business concerns shall, to the maximum extent practicable, be expeditiously handled.

"(c) **ADVISORY COMMITTEE PARTICIPATION.**—Representatives of small business concerns shall be afforded the maximum opportunity to participate in such advisory committees as may be established pursuant to the provisions of this Act.

"(d) **INFORMATION.**—Information about the Act and activities under the Act shall be made available to small business concerns.

"(e) **ALLOCATIONS UNDER SECTION 101.**—Whenever the President makes a determination to exercise any authority to allocate any material pursuant to section 101 of this Act, small business concerns shall be accorded, so far as practicable, a fair share of such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to new small business concerns or individual firms facing undue hardship."

SEC. 132. DEFINITIONS.

Section 702 of the Defense Production Act of 1950 (50 U.S.C. App. 2152) is amended to read as follows:

"SEC. 702. DEFINITIONS.

As used in this Act—

"(1) **CRITICAL COMPONENT.**—The term 'critical component' includes such components, subsystems, systems, and related special tooling and test equipment essential to the production, repair, maintenance, or operation of weapon systems or other items of military equipment as are identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.

"(2) **CRITICAL INDUSTRY FOR NATIONAL SECURITY.**—The term 'critical industry for national security' means any industry (or industry sector) identified pursuant to section 2503(6) of title 10, United States Code, and such other industries or industry sectors as may be designated by the President as essential to provide industrial resources required for the execution of the national security strategy of the United States.

"(3) **CRITICAL TECHNOLOGY.**—The term 'critical technology' includes any technology that is included in 1 or more of the plans submitted pursuant to section 2508 of title 10, United States Code (unless subsequently deleted), or such other emerging or dual use technology as may be designated by the President.

"(4) **CRITICAL TECHNOLOGY ITEM.**—The term 'critical technology item' shall mean materials directly employing, derived from, or utilizing a critical technology.

"(5) **DEFENSE CONTRACTOR.**—The term 'defense contractor' means any person who enters into a contract with the United States to furnish materials, industrial resources, or a critical technology, or to perform services for the national defense.

"(6) **DOMESTIC DEFENSE INDUSTRIAL BASE.**—The term 'domestic defense industrial base' means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during war or national emergency.

"(7) **DOMESTIC SOURCE.**—The term 'domestic source' means a business entity—

"(A) that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such firm under a contract with the United States relating to a critical component or a critical technology item, and

"(B) that procures from entities described in subparagraph (A) substantially all of the components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

"(8) **ESSENTIAL WEAPON SYSTEM.**—The term 'essential weapon system' shall mean a major weapon system and other items of

military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.

"(9) FACILITIES.—The term 'facilities' includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

"(10) FOREIGN SOURCE.—The term 'foreign source' means a business entity other than a 'domestic source'.

"(11) INDUSTRIAL RESOURCES.—The term 'industrial resources' means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial capacity.

"(12) MATERIALS.—The term 'materials' includes—

"(A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

"(B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

"(13) NATIONAL DEFENSE.—The term 'national defense' means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity.

"(14) PERSON.—The term 'person' includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

"(15) SERVICES.—The term 'services' includes any effort that is needed or incidental to—

"(A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item, or

"(B) the construction of facilities."

SEC. 133. DELEGATION OF AUTHORITY; APPOINTMENT OF PERSONNEL.

Section 703 of the Defense Production Act of 1950 (50 U.S.C. App. 2153) is amended to read as follows:

*SEC. 703. DELEGATION AND CIVILIAN PERSONNEL.

"(a) DELEGATION OF AUTHORITY.—Except as otherwise specifically provided, the President may—

"(1) delegate any power or authority of the President under this Act to any civilian officer of the Government appointed by and with the advice and consent of the Senate;

"(2) except with regard to title I, authorize reassignment of that officer to an officer or employee of that officer who—

"(A) if a member of the armed forces, is a general or flag officer; or

"(B) if a civilian, is serving in a position in the grade GS-16 or above (or in a comparable or higher position under any other schedule for civilian officers or employees);

"(3) delegate only to an individual described in paragraph (1) the authority to establish policies and procedures for exercising authority under title I; and

"(4) establish such new agencies as may be necessary to manage Federal emergency preparedness programs.

"(b) CIVILIAN PERSONNEL.—Any officer or agency head may appoint civilian personnel

without regard to section 5331(b) of title 5, United States Code, and without regard to the provisions of such title governing appointments in the competitive service, and may fix the rate of basic pay for such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule, as the President deems appropriate to carry out the provisions of this Act."

SEC. 134. REGULATIONS AND ORDERS.

Section 704 of the Defense Production Act of 1950 (50 U.S.C. App. 2154) is amended to read as follows:

*SEC. 704. REGULATIONS AND ORDERS.

"Subject to section 709, the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out the provisions of this Act."

SEC. 135. TECHNICAL AMENDMENTS RESTORING ANTITRUST IMMUNITY FOR EMERGENCY ACTIONS INITIATED BY THE PRESIDENT.

Section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158) is amended—

(1) in subsection (a), by striking "and subsection (j) of section 708A";

(2) by striking subsection (b) and inserting the following new subsection:

"(b) DEFINITIONS.—For purposes of this Act—

"(1) ANTITRUST LAWS.—The term 'antitrust laws' has the meaning given to such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

"(2) PLAN OF ACTION.—The term 'plan of action' means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement."

(3) in subsection (c)(1)—

(A) by striking "Except as otherwise provided in section 708A(o), upon" and inserting "Upon"; and

(B) by inserting "and plans of action" after "voluntary agreements";

(4) in subsection (c)(2), by striking the last sentence;

(5) in the 2d sentence of subsection (d)(1)—

(A) by inserting "and except as provided in subsection (n)" after "specified in this section"; and

(B) by striking ", and the meetings of such committees shall be open to the public";

(6) in subsection (d)(2), by striking out "section 552(b)(1) and (b)(3)" and inserting "paragraphs (1), (3), and (4) of section 552(b)";

(7) in subsection (e)(1), by inserting "and plans of action" after "voluntary agreements";

(8) in subsection (e)(3)(D), by striking "subsection (b)(1) or (b)(3) of section 552" and inserting "section 552b(c)";

(9) in subsection (e)(3)(F)—

(A) by striking "General and to" and inserting "General, the"; and

(B) by inserting ", and the Congress" before the semicolon;

(10) in subsection (e)(3)(G), by striking "subsections (b)(1) and (b)(3) of section 552" and inserting "paragraphs (1), (3), and (4) of section 552(b)";

(11) in subsections (f) and (g)—

(A) by inserting "or plan of action" after "voluntary agreement" each place such term appears; and

(B) by inserting "or plan" after "the agreement" each place such term appears;

(12) in subsection (f)(1)(A) (as amended by paragraph (11) of this subsection) by inserting "and submits a copy of such agreement or plan to the Congress" before the semicolon;

(13) in subsection (f)(1)(B) (as amended by paragraph (11) of this subsection) by inserting "and publishes such finding in the Federal Register" before the period.

(14) in subsection (f)(2) (as amended by paragraph (11) of this subsection) by inserting "and publish such certification or finding in the Federal Register" before ". in which case";

(15) in subsection (h)—

(A) by inserting "and plans of action" after "voluntary agreements";

(B) by inserting "or plan of action" after "voluntary agreement" each place such term appears;

(C) by striking "and at the end of paragraph (9);

(D) by striking the period at the end of paragraph (10) and inserting "; and"; and

(E) by adding at the end the following new paragraph:

"(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission, and the Congress."

(16) in subsection (h)(3), by striking "subsections (b)(1) and (b)(3) of section 552" and inserting "paragraph (1), (3), or (4) of section 552(b)"; and

(17) in paragraphs (7) and (8) of subsection (h), by striking "subsection (b)(1) or (b)(3) of section 552" and inserting "section 552b(c)";

(18) by striking subsection (j) and inserting the following new subsection:

"(j) DEFENSES.—

"(1) IN GENERAL.—Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

"(A) such action was taken—

"(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

"(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

"(B) such person—

"(i) complied with the requirements of this section and any regulation prescribed under this section; and

"(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

"(2) SCOPE OF DEFENSE.—Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or

the President's designee has authorized and actively supervised the voluntary agreement or plan of action.

"(3) BURDEN OF PERSUASION.—Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

"(4) EXCEPTION FOR ACTIONS TAKEN TO VIOLATE THE ANTITRUST LAWS.—The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws."

(19) in subsection (k), by inserting "and plans of action" after "voluntary agreements" each place such term appears;

(20) in subsection (l), by inserting "or plan of action" after "voluntary agreement";

(21) by adding at the end the following new subsections:

"(n) EXEMPTION FROM ADVISORY COMMITTEE ACT PROVISIONS.—Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other Federal law and any Federal regulation relating to advisory committees.

"(o) PREEMPTION OF CONTRACT LAW IN EMERGENCIES.—In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible."

SEC. 136. INFORMATION ON THE DEFENSE INDUSTRIAL BASE.

The Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.) is amended by adding at the end the following new section:

"SEC. 722. DEFENSE INDUSTRIAL BASE INFORMATION SYSTEM.

"(a) ESTABLISHMENT REQUIRED.—

"(1) IN GENERAL.—The President, acting through the Secretary of Defense and the heads of such other Federal agencies as the President may determine to be appropriate, shall provide for the establishment of an information system on the domestic defense industrial base which—

"(A) meets the requirements of this section; and

"(B) includes a systematic continuous procedure to collect and analyze information necessary to evaluate—

"(i) the adequacy of domestic industrial capacity and capability in critical components, technologies, and technology items essential to the national security of the United States; and

"(ii) dependence on foreign sources for industrial parts, components, and technologies essential to defense production.

"(2) INCORPORATION OF DINET.—The defense information network as established and maintained by the Secretary of Defense on the date of the enactment of the Defense Production Act Amendments of 1990 shall be incorporated into the system established pursuant to paragraph (1).

"(3) USE OF INFORMATION.—Information collected and analyzed under the procedure established pursuant to paragraph (1) shall

constitute a basis for making any determination to exercise any authority under this Act and a procedure for using such information shall be integrated into the decisionmaking process with regard to the exercise of any such authority.

"(b) SOURCES OF INFORMATION.—

"(1) FOREIGN DEPENDENCE.—

"(A) SCOPE OF INFORMATION REVIEW.—The procedure established to meet the requirements of subsection (a)(1)(B)(ii) shall address defense production with respect to the operations of prime contractors and at least the first 2 tiers of subcontractors.

"(B) USE OF EXISTING DATA COLLECTION AND REVIEW CAPABILITIES.—To the extent feasible and appropriate, the President shall build upon existing methods of data collection and analysis and shall integrate information available from intelligence agencies with respect to industrial and technological conditions in foreign countries.

"(C) INITIAL EMPHASIS ON PRIORITY LISTS.—In establishing the procedure referred to in subparagraph (A), the Secretary may place initial emphasis on the production of parts and components relating to priority lists such as the Commanders' in Chief Critical Items List and the technologies identified as critical in the annual defense critical technologies plan submitted pursuant to section 2508 of title 10, United States Code.

"(2) PRODUCTION BASE ANALYSIS.—

"(A) TOP-TO-BOTTOM REVIEW.—Effective on or after October 1, 1991, the analysis of the production base for any major procurement project which is included in the information system maintained pursuant to subsection (a) shall, in addition to any information and analyses the President may require—

"(i) include a review of all levels of acquisition and production, beginning with any raw material, special alloy, or composite material involved in the production and ending with the completed product;

"(ii) identify each contractor and subcontractor at each level of acquisition and production with respect to such project which represents a potential for delaying or preventing the production and acquisition, including the identity of each contractor or subcontractor whose contract qualifies as a foreign source or sole source contract and any supplier which is a foreign or sole source for any item required in the production; and

"(iii) include information to permit appropriate management of accelerated or surge production.

"(B) INITIAL REQUIREMENT FOR STUDY OF PRODUCTION BASES FOR NOT MORE THAN 6 MAJOR WEAPON SYSTEMS.—In establishing the information system under subsection (a), the President, acting through the Secretary of Defense, shall require an analysis of the production base for not more than 2 weapons of each military department which are major systems (as defined in section 2305(5) of title 10, United States Code).

"(3) CONSULTATION REGARDING THE CENSUS OF MANUFACTURERS.—

"(A) IN GENERAL.—The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director of the Federal Emergency Management Agency with a view to improving the application of information derived from the Census of Manufacturers to the purposes of this section.

"(B) ISSUES TO BE ADDRESSED.—Such consultations shall address improvements in the level of detail, timeliness, and availability of input and output analyses derived from the Census of Manufacturers necessary to facilitate the purposes of this section.

"(c) STRATEGIC PLAN FOR DEVELOPING COMPREHENSIVE SYSTEM.—

"(1) PLAN REQUIRED.—Not later than December 31, 1992, the President shall provide for the establishment of and report to Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components, technologies, and technology items.

"(2) ASSESSMENT OF CERTAIN PROCEDURES.—In establishing plan under paragraph (1), the President shall assess the performance and cost-effectiveness of procedures implemented under subsection (b) and shall seek to build upon such procedures as appropriate.

"(d) CAPABILITIES OF SYSTEM.—

"(1) IN GENERAL.—In connection with the establishment of the information system under subsection (a), the President shall direct the Secretary of Defense, the Secretary of Commerce, and the heads of such other Federal agencies as the President may determine to be appropriate to—

"(A) consult with each other and provide such information, assistance, and cooperation as may be necessary to establish and maintain the information system in a manner which allows the coordinated and efficient entry of information on the domestic defense industrial base into, and the withdrawal, subject to the protection of proprietary data, of information on the domestic defense industrial base from the system on an on-line interactive basis by the Department of Defense;

"(B) assure access to the information on the system, as appropriate, by all participating Federal agencies, including each military department;

"(C) coordinate standards, definitions, and specifications for information on defense production which is collected by the Department of Defense and the military departments so that such information can be used by any Federal agency or department which the President determines to be appropriate; and

"(D) assure that the information in the system is updated, as appropriate, with the active assistance of the private sector.

"(2) TASK FORCE ON MILITARY-CIVILIAN PARTICIPATION.—Upon the establishment of the information system under subsection (a), the President shall convene a task force consisting of the Secretary of Defense, the Secretary of Commerce, the Secretary of each military department, and the heads of such other Federal agencies and departments as the President may determine to be appropriate to establish guidelines and procedures to ensure that all Federal agencies and departments which acquire information with respect to the domestic defense industrial base are fully participating in the system, unless the President determines that all appropriate Federal agencies and departments, including each military department, are voluntarily providing information which is necessary for the system to carry out the purposes of this Act and chapter 148 of title 10, United States Code.

"(e) REPORT ON SUBCONTRACTOR AND SUPPLIER BASE.—

"(1) REPORT REQUIRED.—At the times required under paragraph (4), the President shall issue a report which includes—

"(A) a list of critical components, technologies, and technology items for which there is found to be inadequate domestic industrial capacity or capability; and

"(B) an assessment of those subcontractors of the economy of the United States which—

"(i) support production of any component, technology, or technology item listed pursuant to paragraph (1); or

"(ii) have been identified as being critical to the development and production of components required for the production of weapons, weapon systems, and other military equipment essential to the national defense.

"(2) MATTERS TO BE CONSIDERED.—The assessment made under paragraph (1)(B) shall consider—

"(A) the capacity of domestic sources, especially commercial firms, to fulfill peacetime requirements and graduated mobilization requirements for various items of supply and services;

"(B) any trend relating to the capabilities of domestic sources to meet such peacetime and mobilization requirements;

"(C) the extent to which the production or acquisition of various items of military material is dependent on foreign sources; and

"(D) any reason for the decline of the capabilities of selected sectors of the United States economy necessary to meet peacetime and mobilization requirements, including stability of defense requirements, acquisition policies, vertical integration of various segments of the industrial base, superiority of foreign technology and production efficiencies, foreign government support of nondomestic sources, and offset arrangements.

"(3) POLICY RECOMMENDATIONS.—The report may provide specific policy recommendations to correct deficiencies identified in the assessment, which would help to strengthen domestic sources.

"(4) TIME FOR ISSUANCE.—The report required by paragraph (1) shall be issued not later than July 1 of each odd-numbered year which begins after 1991, based upon data from the prior fiscal year and such prior fiscal years as may be appropriate.

"(5) RELEASE OF UNCLASSIFIED REPORT.—The report required by this subsection may be classified. An unclassified version of the report shall be available to the public.

"(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President for purposes of this section not more than \$10,000,000, to remain available until expended, of which not more than \$3,000,000 shall be available for the purposes of subsection (b)(2)."

SEC. 137. PUBLIC PARTICIPATION IN RULE-MAKING.

(a) IN GENERAL.—Section 709 of the Defense Production Act of 1950 (50 U.S.C. 2159) is amended to read as follows:

"SEC. 709. PUBLIC PARTICIPATION IN RULE-MAKING.

"(a) EXEMPTION FROM THE ADMINISTRATIVE PROCEDURE ACT.—Any regulation prescribed or order issued under this Act shall not be subject to sections 551 through 559 of title 5, United States Code.

"(b) OPPORTUNITY FOR NOTICE AND COMMENT.—

"(1) IN GENERAL.—Except as provided in subsection (c), any regulation prescribed or order issued under this Act shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5, United States Code.

"(2) WAIVER FOR TEMPORARY PROVISIONS.—The requirements of paragraph (1) may be waived, if—

"(A) the officer authorized to prescribe the regulation or issue the order finds that urgent and compelling circumstances make compliance with such requirements impracticable;

"(B) the regulation is prescribed or order is issued on a temporary basis; and

"(C) the publication of such temporary regulation or order is accompanied by the finding made under clause (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days of public comment before any regulation or order becomes final.

"(3) All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation or order shall contain written responses to such comments.

"(c) PUBLIC COMMENT ON PROCUREMENT REGULATIONS.—Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this Act shall be subject to section 22 of the Office of Federal Procurement Policy Act."

(b) SCOPE OF APPLICATION.—Section 709 of the Defense Production Act of 1950 (50 U.S.C. App. 2159), as amended by subsection (a) of this section, shall not apply to any regulation prescribed or order issued in proposed or final form on or before the date of enactment of this Act.

SEC. 138. WAIVERS OF CERTAIN EMPLOYMENT RESTRICTIONS.

(a) IN GENERAL.—Section 208 of title 18, United States Code, is amended by adding at the end the following:

"(e)(1) The President may grant a waiver of a restriction imposed by this section to a special Government employee if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the special Government employee are critically needed for the benefit of the Federal Government. Not more than 50 special Government employees currently employed by the Federal Government at any one time may have been granted waivers under this paragraph, of which 25 may be granted only for special Government employees of the Department of Energy for use in discharging the responsibilities of the Department with respect to ensuring adequate energy supplies during the current crisis in the Middle East. A waiver under this paragraph shall not extend to the negotiation or execution of a Government contract with a private employer of an appointee or with any person—

"(A) in which the appointee has a financial interest within the meaning of this section; or

"(B) with which the appointee has an official relationship.

"(2) Waivers under paragraph (1) may be granted only to special Government employees of the executive branch, other than such employees in the Executive Office of the President.

"(3) A certification under paragraph (1) shall take effect upon its publication in the Federal Register and shall identify—

"(A) the special Government employee covered by the waiver by name and by position, and

"(B) the reasons for granting the waiver.

A copy of the certification shall also be provided to the Director of the Office of Government Ethics.

"(4) The President may not delegate the authority provided by this subsection.

"(5)(A) The designated agency ethics official (as defined in section 109 of the Ethics in Government Act of 1978) of the agency which employs a person granted a waiver under this subsection shall prepare, at the termi-

nation of that person's service as a special Government employee (with respect to which the waiver was granted), a report stating whether the person has engaged in activities otherwise prohibited by this section, and if so, what those activities were. Before the report is filed under subparagraph (B), the person with respect to whom the report was prepared shall certify that the contents of the report are complete and accurate, to the person's best knowledge and belief.

"(B) A report under subparagraph (A) shall be filed with the President and the Director of the Office of Government Ethics not later than 60 days after the date of the termination of that person's service as a special Government employee, but in no event later than November 30, 1991.

"(C) If the report required to be filed under subparagraph (B) is not filed, the person who is the subject of the report shall be ineligible for any Federal Government employment until such report is filed.

"(D) If an agency fails to prepare and file a report under this subsection by the date required by subparagraph (B), no employee of that agency may, after such date, be granted a waiver under this subsection until such report is prepared and filed.

"(6) Any waiver granted under this subsection shall terminate on September 30, 1991."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 710 of the Defense Production Act of 1950 (50 U.S.C. App. 2160) is amended—

(1) by striking paragraph (4) of subsection (b);

(2) by striking the last sentence of subsection (c);

(3) in subsection (d), by striking out "needed; and he is" and inserting "needed."; and

(4) by striking the last sentence of subsection (e).

PART E—TECHNICAL AMENDMENTS

SEC. 141. PRIORITIES IN CONTRACTS AND ORDERS.

Section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071) is amended—

(1) in subsection (a)(2) by striking "materials and facilities" and inserting "materials, services, and facilities";

(2) in subsection (c)(1) by striking "supplies of materials and equipment" and inserting "materials, equipment, and services";

(3) by striking paragraphs (2) and (3) and inserting the following new paragraph:

"(2) The authority granted by this subsection may not be used to require priority performance of contracts or orders, or to control the distribution of any supplies of materials, service, and facilities in the marketplace, unless the President finds that—

"(A) such materials, services, and facilities are scarce, critical, and essential—

"(i) to maintain or expand exploration, production, refining, transportation,

"(ii) to conserve energy supplies; or

"(iii) to construct or maintain energy facilities; and

"(B) maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in paragraph (1) of this subsection."; and

(4) by redesignating paragraph (4) as paragraph (3).

SEC. 142. TECHNICAL CORRECTION.

Section 301(e)(2)(B) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(e)(2)(B)) is amended by striking "and to the Commit-

tees on Banking and Currency of the respective Houses" and inserting "and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives".

SEC. 143. INVESTIGATIONS; RECORDS; REPORTS; SUBPOENAS.

Section 705 of the Defense Production Act of 1950 (50 U.S.C. App. 2155) is amended—

(1) in subsection (a), by striking "subpena" and inserting "subpoena";

(2) by redesignating subsections (c), (d), (e), and (f) as subsections (b), (c), (d), and (e), respectively;

(3) in subsection (c) (as redesignated by paragraph (2)), by striking "\$1,000" and inserting "\$10,000"; and

(4) in subsection (d) (as redesignated by paragraph (2)), by striking all after the first sentence.

SEC. 144. EMPLOYMENT OF PERSONNEL.

(a) NOTICE OF APPOINTMENT AND FINANCIAL DISCLOSURE FOR EMPLOYEES SERVING WITHOUT COMPENSATION.—Section 710(b)(6) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(b)(6)) is amended to read as follows: "(6) NOTICE AND FINANCIAL DISCLOSURE REQUIREMENTS.—

"(A) PUBLIC NOTICE OF APPOINTMENT.—The head of any department or agency who appoints any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee's position, and the name of the appointee's private employer.

"(B) FINANCIAL DISCLOSURE.—Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 101 of the Ethics in Government Act of 1978, shall file a confidential financial disclosure report pursuant to section 107 of such Act with the appointing department or agency."

(b) TECHNICAL AMENDMENTS.—Section 710(b) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(b)) is amended—

(1) in paragraph (7)—
(A) by striking "Chairman of the United States Civil Service Commission" and inserting "Director of the Office of Personnel Management"; and

(B) by striking "and the Joint Committee on Defense Production"; and

(2) in paragraph (8), by striking "transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes and regular places of business pursuant to such appointment" and inserting "reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code".

SEC. 145. TECHNICAL CORRECTION.

Section 711(a)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended by striking "Bureau of the Budget" and inserting "Office of Management and Budget".

PART F—REPEALERS AND CONFORMING AMENDMENTS

SEC. 151. SYNTHETIC FUEL ACTION.

Section 307 of the Defense Production Act of 1950 (50 U.S.C. App. 2097) is amended—

(1) in subsection (b), by striking the 2d sentence; and

(2) by striking subsection (c) and all that follows through the end of the section.

SEC. 152. VOLUNTARY AGREEMENTS.

Section 708A of the Defense Production Act of 1950 (50 U.S.C. App. 2158a) is repealed.

SEC. 153. REPEAL OF INTEREST PAYMENT PROVISIONS.

Section 711 of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended—

(1) by striking subsection (b),

(2) by striking "(a)(1) Except as provided in paragraph (2) and paragraph (4)" and inserting "(a) Except as provided in subsection (c)",

(3) by striking in subsection (a) in the parenthetical "and for the payment of interest under subsection (b) of this section", and

(4) by striking paragraph (2) and redesignating paragraph (3) as subsection (b), and

(5) by striking subparagraph (B) of paragraph (4) and redesignating paragraph (4)(A) as subsection (c).

SEC. 154. JOINT COMMITTEE ON DEFENSE PRODUCTION.

Section 712 of the Defense Production Act of 1950 (50 U.S.C. App. 2162) is repealed.

SEC. 155. PERSONS DISQUALIFIED FOR EMPLOYMENT.

Section 716 of the Defense Production Act of 1950 (50 U.S.C. App. 2165) is repealed.

SEC. 156. FEASIBILITY STUDY ON UNIFORM COST ACCOUNTING STANDARDS; REPORT SUBMITTED.

Section 718 of the Defense Production Act of 1950 (50 U.S.C. App. 2167) is repealed.

SEC. 157. NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES.

Section 720 of the Defense Production Act of 1950 (50 U.S.C. App. 2169) is repealed.

PART G—REAUTHORIZATION OF SELECTED PROVISIONS

SEC. 161. AUTHORIZATION OF APPROPRIATIONS.

Section 711(c) of the Defense Production Act of 1950 (as amended by section 143 of this Act) is amended to read as follows:

"(c) There are authorized to be appropriated for each of fiscal years 1991, 1992, and 1993 not to exceed \$130,000,000 to carry out the provisions of title III of this Act."

SEC. 162. EXTENSION OF PROGRAM.

The 1st sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking "October 20, 1990" and inserting "September 30, 1993".

SEC. 163. EXEMPTION FROM TERMINATION.

Section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking "and 719" and inserting "719, and 721".

TITLE II—ADDITIONAL PROVISIONS TO IMPROVE INDUSTRIAL PREPAREDNESS

PART A—ENCOURAGING IMPROVEMENT OF THE DEFENSE INDUSTRIAL BASE

SEC. 201. PROCUREMENT OF CRITICAL COMPONENTS AND CRITICAL TECHNOLOGY ITEMS.

(a) POLICY REQUIRED.—The President, acting through the Administrator for Federal Procurement Policy, shall issue a procurement policy providing for the solicitation and award of contracts for the procurement of critical components or critical technology items in accordance with the requirements of subsection (b).

(b) PERFORMANCE BY DOMESTIC SOURCES.—Except as provided in subsection (c), any solicitation for the procurement of a critical component or a critical technology item shall—

(1) contain a specification that only domestic sources are eligible for award; or

(2) contain provisions that—
(A) specify the minimum percentage of the total estimated value of the contract that is

to be performed by 1 or more domestic sources;

(B) provide for the attainment of such requirement by the firm selected as prime contractor or through subcontractors pursuant to a subcontracting plan submitted with the prime contractor's offer;

(C) specify that offers shall be evaluated for award on a basis reflecting the extent that each offer meets or exceeds the specified percentage, such evaluation factor being accorded significant weight (not more than 10 percent of the total value of all evaluation factors to be considered in making the award decision).

(c) WAIVER.—

(1) IN GENERAL.—The requirements of paragraphs (1) and (2) of subsection (b) may be waived in accordance with regulation specifying circumstances under which the contracting officer may make a determination that such restrictions are likely to result in a significant adverse impact on the national interests of the United States.

(2) PROCEDURE.—The determination of the contracting officer shall be—

(A) supported by a specific written finding which justifies such determination; and

(B) approved by the senior procurement executive of the department or agency (designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act) or a designee of such officer.

(3) PUBLIC AVAILABILITY.—Copies of waiver determination approved pursuant to paragraph (1) (including the supporting written justifications and approvals) shall be made available upon request to—

(A) the public, consistent with the provisions of section 552 of title 5, United States Code, or

(B) any member, or duly constituted committee, of the Congress.

(d) ACQUISITION REGULATIONS REQUIRED.—Before the end of the 270-day period beginning on the date of the enactment of this Act, the single Government-wide Federal Acquisition Regulation, referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act, shall be modified to provide for the solicitation, award, and administration of contracts for the procurement of critical components or critical technology items in accordance with provisions of the policy required by subparagraph (A).

(e) DEFINITIONS.—For the purpose of this section, the terms "critical component", "critical technology item", and "domestic source" have the meanings given to such terms in section 702 of the Defense Production Act of 1950.

SEC. 202. RECOGNITION OF MODERNIZED PRODUCTION SYSTEMS AND EQUIPMENT IN CONTRACT AWARD AND ADMINISTRATION.

(a) IN GENERAL.—The single Government-wide Federal Acquisition Regulation, referred to in section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)), shall be amended to specify the circumstances under which an acquisition plan for any major system acquisition, or any other acquisition program designated by the Secretary or agency head responsible for such acquisition, shall provide for contract solicitation provisions which encourage competing offerors to acquire for utilization in the performance of the contract modern industrial facilities and production systems (including hardware and software), and other modern production equipment, that increase the productivity of the offerors and reduce the costs of production.

(b) AUTHORIZED SOLICITATION PROVISIONS.—Contract solicitation provisions referred to

in subsection (a) may include any of the following provisions:

(1) An evaluation advantage in making the contract award determination.

(2) A provision for a domestic contractor to share in any demonstrated cost savings that are attributable to increased productivity resulting from the following contractor actions not required by the contract—

(A) the acquisition and utilization of modern industrial facilities and production systems (including hardware and software), and other modern production equipment, for the performance of the contract; or

(B) the utilization of other manufacturing technology improvements in the performance of the contract.

(c) DOMESTIC CONTRACTOR DEFINED.—For purposes of this section and section 203, the term "domestic contractor" has the meaning given to the "domestic source" in section 702(7) of the Defense Production Act of 1950.

SEC. 203. SUSTAINING INVESTMENT.
It is the sense of the Congress that, in order to encourage investment to maintain our Nation's technological leadership, to preserve the strength of our industrial base, and to encourage contractors to invest in advanced manufacturing technology, advanced production equipment, and advanced manufacturing processes, the Secretary of Defense as part of his implementation of changes to defense acquisition policies pursuant to the Defense Management Review shall consider—

(1) full allowability of independent research and development bid and proposal costs;

(2) appropriate regulatory changes to increase the progress payment rates payable under contracts; and

(3) an increase of not more than 10 percent in the amount which would otherwise be reimbursable to a domestic contractor as the Government's share of costs incurred for the acquisition of production special tooling, production special test equipment, and production special systems (including hardware and software) for use in the performance of the contract.

PART B—MISCELLANEOUS

SEC. 211. DISCOURAGING UNFAIR TRADE PRACTICES.

(a) SUSPENSION OR DEBARMENT AUTHORIZED.—Subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) shall be amended to specify the circumstances under which a contractor, who has engaged in an unfair trade practice, as defined in subsection (b), may be found to presently lack such business integrity or business honesty that seriously and directly affects the responsibility of the contractor to perform any contract awarded by the Federal Government or perform a subcontract under such a contract.

(b) DEFINITIONS.—For purposes of this section, the term "unfair trade practice" means the commission of any of the following acts by a contractor:

(1) An unfair trade practice, as determined by the International Trade Commission, for a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordinating Committee" for purposes of the Export Administration Act of 1979 or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of

the department or the head of the agency to which such certificate was furnished.

TITLE III—AMENDMENT TO RELATED LAWS

SEC. 301. ENERGY SECURITY.

(a) CONGRESSIONAL INTEREST MANIFEST IN OTHER LAWS.—The Congress hereby finds that congressional interest in energy security and the availability of energy for defense mobilization, industrial preparedness, and other purposes of the Defense Production Act of 1950 has also been expressed in various statutes enacted since the date of the enactment of such Act, including the provisions of Geothermal Energy Research, Development, and Demonstration Act of 1974, the Biomass Energy and Alcohol Fuels Act of 1980, and the Synthetic Fuels Corporation Act of 1985 which relate to geothermal energy, alcohol, and synthetic fuel projects.

(b) REPORTS REQUIRED.—To assist the Congress in discharging congressional responsibility for energy security and the availability of energy for defense mobilization, industrial preparedness, and other purposes of the Defense Production Act of 1950, the President shall prepare and transmit to the Congress, no less frequently than the end of each odd-numbered year, the projected capacity and potential prospects for the use of alternative and renewable sources of energy for such purposes.

(c) GEOTHERMAL ENERGY PROGRAM.—Section 203 of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1143) (relating to period of guaranties and interest assistance) is amended by striking "1990" and inserting "1993".

TITLE IV—FAIR TRADE IN FINANCIAL SERVICES

SEC. 401. SHORT TITLE.

This title may be cited as the "Fair Trade in Financial Services Act of 1990".

SEC. 402. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR BANKS AND BANK HOLDING COMPANIES.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following:

"NATIONAL TREATMENT

"Sec. 15. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States banks and bank holding companies that operate or seek to operate in those countries, and thereby end discrimination against United States banks and bank holding companies.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States banks and bank holding companies—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competitiveness Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States banks and bank holding companies; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States banks and holding companies.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States banks or bank holding companies.

"(2) ACTION BY AGENCY.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, any Federal banking agency—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) among the factors the agency considers in evaluating any application or notice filed by a person of that foreign country; and

"(B) may, based upon that determination and in consultation with the Secretary, deny the application or disapprove the notice.

"(3) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) PREVENTING EXISTING ENTITIES FROM BEING USED TO EVADE THIS SECTION.—

"(1) IN GENERAL.—If a determination under subsection (d)(1) is in effect with respect to a foreign country, no bank, foreign bank described in section 8(a), branch, agency, commercial lending company, or other affiliated entity that is a person of that country shall, without prior approval pursuant to paragraph (3) or (4), directly or indirectly, in the United States—

"(A) commence any line of business in which it was not engaged as of the date on which that determination was published in the Federal Register; or

"(B) conduct business from any location at which it did not conduct business as of that date.

"(2) EXCEPTION.—Paragraph (1) shall not apply with respect to transactions under section 2(h)(2) of the Bank Holding Company Act of 1956.

"(3) STATE-SUPERVISED ENTITIES.—

"(A) This paragraph shall apply if—

"(i) the entity in question is an uninsured State bank or branch, a State agency, or a commercial lending company;

"(ii) the State requires the entity to obtain the prior approval of the State bank supervisor before engaging in the activity described in subparagraph (A) or (B) of paragraph (1); and

"(iii) no other provision of Federal law requires the entity to obtain the prior approval of a Federal banking agency before engaging in that activity.

"(B) The State bank supervisor shall consult about the application with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act). If the State bank supervisor approves the application, the supervisor shall notify the appropriate Federal banking agency and provide the agency with a copy of the record of the application. During the 45-day period beginning on the date on which the appropriate Federal banking agency receives the record, the agency, after consultation with the State bank supervisor—

"(i) may include the determination under subsection (d)(1) and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) of this section among the factors the agency considers in evaluating the application; and

"(ii) may issue an order disapproving the activity in question based upon that determination and in consultation with the Secretary of the Treasury.

The period for disapproval under clause (ii) may, in the agency's discretion, be extended for not more than 45 days.

"(4) FEDERAL APPROVAL.—If the transaction is not described in paragraph (3)(A), the entity in question shall obtain the prior approval of the appropriate Federal banking agency.

"(5) INFORMING STATE SUPERVISORS.—The Secretary of the Treasury shall inform State bank supervisors of any determination under subsection (d)(1).

"(6) EFFECT ON OTHER LAW.—Nothing in this subsection shall be construed to relieve the entity in question from any otherwise applicable requirement of Federal law.

"(f) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States banks and bank holding companies if it offers them the same competitive opportunities (including effective market access) as are available to its domestic banks and bank holding companies.

"(g) PERSON OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country, or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(h) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Federal banking agencies shall act in a man-

ner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Federal banking agencies, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a bank, foreign bank, branch, agency, commercial lending company, or other affiliated entity that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States banks and bank holding companies; and

"(ii) whether that country would permit United States banks and bank holding companies already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's banks and bank holding companies; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section."

SEC. 403. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR SECURITIES BROKERS AND DEALERS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"NATIONAL TREATMENT

"SEC. 36. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States brokers and dealers that operate or seek to operate in those countries, and thereby end discrimination against United States brokers and dealers.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States brokers and dealers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omni-

bus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States brokers or dealers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States brokers and dealers.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States brokers or dealers.

"(2) ACTIONS BY COMMISSION.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or

"(ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, based upon that determination and in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) NOTICE REQUIRED TO ACQUIRE BROKER OR DEALER.—

"(A) IN GENERAL.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered broker or dealer unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) COMMISSION MAY EXTEND 60-DAY PERIOD.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) EFFECTIVE DATE.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States brokers and dealers if it offers

them the same competitive opportunities (including effective market access) as are available to its domestic brokers and dealers.

“(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

“(1) is organized under the laws of that country;

“(2) has its principal place of business in that country;

“(3) in the case of an individual—

“(A) is a citizen of that country; or

“(B) is domiciled in that country; or

“(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

“(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

“(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

“(2) the Commission, in consultation with the Secretary of the Treasury—

“(A) shall consider, with respect to a broker or dealer that is a person of a foreign country and is already operating in the United States—

“(i) the extent to which that foreign country has a record of according national treatment to United States brokers and dealers; and

“(ii) whether that country would permit United States brokers or dealers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's brokers or dealers; and

“(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.”

SEC. 404. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR INVESTMENT ADVISERS.

The Investment Advisers Act of 1940 (12 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:

“NATIONAL TREATMENT

“SEC. 223. (a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States investment advisers that operate or seek to operate in those countries, and thereby end discrimination against United States investment advisers.

“(b) REPORTS REQUIRED.—

“(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

“(A) identifying any foreign country—

“(i) that does not accord national treatment to United States investment advisers—

“(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

“(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

“(i) with respect to which no determination under subsection (d)(1) is in effect;

“(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

“(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

“(2) SUBMISSION OF REPORT.—

“(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competitiveness Act of 1988.

“(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the ‘most recent report’ for purposes of paragraph (1)(A)(i)(I).

“(c) NEGOTIATIONS REQUIRED.—

“(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

“(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States investment advisers; and

“(B) with respect to which no determination under subsection (d)(1) is in effect, to ensure that such country accords national treatment to United States investment advisers.

“(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

“(A) determines that such negotiations would be fruitless or would impair national economic interests; and

“(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

“(d) DISCRETIONARY SANCTIONS.—

“(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States investment advisers.

“(2) ACTIONS BY COMMISSION.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

“(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

“(B) may, based upon that determination and in consultation with the Secretary, deny the application or prohibit the acquisition.

“(3) NOTICE REQUIRED TO ACQUIRE INVESTMENT ADVISER.—

“(A) IN GENERAL.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered investment adviser unless—

“(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

“(ii) the Commission has not prohibited the acquisition.

“(B) COMMISSION MAY EXTEND 60-DAY PERIOD.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

“(C) EFFECTIVE DATE.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

“(4) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

“(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States investment advisers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic investment advisers.

“(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

“(1) is organized under the laws of that country;

“(2) has its principal place of business in that country;

“(3) in the case of an individual—

“(A) is a citizen of that country; or

“(B) is domiciled in that country; or

“(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

“(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

“(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

“(2) the Commission, in consultation with the Secretary of the Treasury—

“(A) shall consider, with respect to an investment adviser that is a person of a foreign country and is already operating in the United States—

“(i) the extent to which that foreign country has a record of according national treatment to United States investment advisers; and

“(ii) whether that country would permit United States investment advisers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's investment advisers; and

“(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.”

SEC. 405. FINANCIAL INTERDEPENDENCE STUDY.

Subtitle G of title III of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5341 et seq.) is amended by adding at the end thereof the following new section:

“SEC. 3605. FINANCIAL INTERDEPENDENCE STUDY.

“(a) INVESTIGATION REQUIRED.—The Secretary of the Treasury, in consultation and coordination with the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), and any other appropriate Federal agency or department to be designated by

the Secretary of the Treasury, shall conduct an investigation to determine the extent of the interdependence of the financial services sectors of the United States and foreign countries whose financial services institutions provide financial services in the United States, or whose persons have substantial ownership interests in United States financial services institutions, and the economic, strategic, and other consequences of that interdependence for the United States.

“(b) REPORT.—The Secretary of the Treasury shall transmit a report on the results of the investigation under subsection (a) within 2 years after the date of enactment of this section to the President, the Congress, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and any other appropriate Federal agency or department as designated by the Secretary of the Treasury. The report shall—

“(1) describe the activities and estimate the scope of financial services activities conducted by United States financial services institutions in foreign markets (differentiated according to major foreign markets);

“(2) describe the activities and estimate the scope of financial services activities conducted by foreign financial services institutions in the United States (differentiated according to the most significant home countries or groups of home countries);

“(3) estimate the number of jobs created in the United States by financial services activities conducted by foreign financial services institutions and the number of jobs created in foreign countries by financial services activities conducted by United States financial services institutions;

“(4) estimate the additional jobs and revenues (both foreign and domestic) that would be created by the activities of United States financial services institutions in foreign countries if those countries offered such institutions the same competitive opportunities (including effective market access) as are available to those countries' domestic financial services institutions;

“(5) describe the extent to which foreign financial services institutions discriminate against United States persons in procurement, employment, providing credit or other financial services, or otherwise;

“(6) describe the extent to which foreign financial services institutions and other persons from foreign countries purchase or otherwise facilitate the marketing from the United States of government and private debt instruments and private equity instruments;

“(7) describe how the interdependence of the financial services sectors of the United States and foreign countries affects the autonomy and effectiveness of United States monetary policy;

“(8) describe the extent to which United States companies rely on financing by or through foreign financial services institutions, and the consequences of such reliance (including disclosure of proprietary information) for the industrial competitiveness and national security of the United States;

“(9) describe the extent to which foreign financial services institutions, in purchasing high technology products such as computers and telecommunications equipment, favor manufacturers from their home countries over United States manufacturers; and

“(10) contain other appropriate information relating to the results of the investigation under subsection (a).

“(c) DEFINITIONS.—As used in this section, the term ‘financial services institution’ means—

“(1) a broker, dealer, underwriter, clearing agency, transfer agent, or information processor with respect to securities, including government and municipal securities;

“(2) an investment company, investment manager, investment adviser, indenture trustee, or any depository institution, insurance company, or other organization operating as a fiduciary, trustee, underwriter, or other financial services provider;

“(3) any depository institution or depository institution holding company (as such terms are defined in section 3 of the Federal Deposit Insurance Act); and

“(4) any other entity providing financial services.”.

SEC. 406. CONFORMING AMENDMENTS SPECIFYING THAT NATIONAL TREATMENT INCLUDES EFFECTIVE MARKET ACCESS.

(a) QUADRENNIAL REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS.—Section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5352) is amended—

(1) in paragraph (3), by striking “and securities companies” and inserting “, securities companies, and investment advisers”; and

(2) by adding at the end the following: “For purposes of this section, a foreign country denies national treatment to United States entities unless it offers them the same competitive opportunities (including effective market access) as are available to its domestic entities.”.

(b) NEGOTIATIONS TO PROMOTE FAIR TRADE IN FINANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5353(a)(1)) is amended by inserting “effective” after “banking organizations and securities companies have”.

(c) PRIMARY DEALERS IN GOVERNMENT DEBT INSTRUMENTS.—Section 3502(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5342) is amended—

(1) by striking “does not accord to” and inserting “does not offer”;

(2) by inserting “(including effective market access)” after “the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country”; and

(3) by striking “as such country accords to” and inserting “as are available to”.

TITLE V—EFFECTIVE DATES

SEC. 501. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall take effect on October 20, 1990.

(b) SPECIAL RULES.—(1) No action taken by the President or the President's designee between October 20, 1990, and the date of enactment of this Act shall prejudice the ability of the President or the President's designee to take action under section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170).

(2) Title IV of this Act takes effect on the date of enactment of this Act.

(3) The acquisition policies required by this Act shall be incorporated as part of the Federal Acquisition Regulation within 270 days after enactment. Such policies shall apply to solicitations issued 60 days after such regulations are issued.

(4) No report under section 107(f) of the Defense Production Act of 1950 (as added by section 111 of this Act) shall be required before January 31, 1993.

MOTION OFFERED BY MR. CARPER

Mr. CARPER. Mr. Speaker, I offer a motion.

The SPEAKER pro tempore. The Clerk will report the motion.

Mr. WALKER. Mr. Speaker, reserving the right to object—

The SPEAKER pro tempore. The Chair will inform the gentleman that this is pursuant to a rule. It is not pursuant to a unanimous-consent request, and the Clerk will report the motion.

Mr. WALKER. Mr. Speaker, I cannot hear a thing.

The SPEAKER pro tempore. The House will be in order.

This is pursuant to a rule, it is not a unanimous consent request, and the Clerk will report the motion.

The Clerk read as follows:

Mr. CARPER moves to strike out all after the enacting clause of the Senate bill, S. 347, and to insert in lieu thereof the text of H.R. 3039, as passed by the House, as follows:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Defense Production Act Amendments of 1991”.

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950

PART A—DECLARATION OF POLICY

Sec. 101. Declaration of policy.

PART B—AMENDMENTS TO TITLE I OF THE DEFENSE PRODUCTION ACT

Sec. 111. Strengthening of domestic capability and assistance for small businesses.

Sec. 112. Limitation on actions without congressional authorization.

PART C—AMENDMENTS TO TITLE III OF THE DEFENSE PRODUCTION ACT

Sec. 121. Expanding the reach of existing authorities under title III.

Sec. 122. Defense Production Act Fund.

Sec. 123. Declaration of offset policy.

Sec. 124. Civil-military integration.

Sec. 125. Testing, qualification, and incorporation of materials for use for weapon systems and development programs.

PART D—AMENDMENTS TO TITLE VII OF THE DEFENSE PRODUCTION ACT

Sec. 131. Small business.

Sec. 132. Definitions.

Sec. 133. Regulations and orders.

Sec. 134. Information on the defense industrial base.

Sec. 135. Public participation in rulemaking.

PART E—TECHNICAL AMENDMENTS

Sec. 141. Technical correction.

Sec. 142. Investigations; records; reports; subpoenas.

Sec. 143. Employment of personnel.

Sec. 144. Technical correction.

PART F—REPEALERS AND CONFORMING AMENDMENTS

Sec. 151. Synthetic fuel action.

Sec. 152. Repeal of interest payment provisions.

Sec. 153. Joint Committee on Defense Production.

Sec. 154. Persons disqualified for employment.

Sec. 155. Feasibility study on uniform cost accounting standards; report submitted.

Sec. 156. National Commission on Supplies and Shortages.

PART G—REAUTHORIZATION OF SELECTED PROVISIONS

- Sec. 161. Authorization of appropriations.
 Sec. 162. Extension of program.
 Sec. 163. Quadrennial report.

TITLE II—ADDITIONAL PROVISIONS TO IMPROVE INDUSTRIAL PREPAREDNESS

- Sec. 201. Discouraging unfair trade practices.
 Sec. 202. Evaluation of domestic defense industrial base policy.

TITLE III—AMENDMENT TO RELATED LAWS

- Sec. 301. Energy security.

TITLE IV—EFFECTIVE DATE

- Sec. 401. Effective date.

TITLE V—BUY AMERICAN PROVISIONS

- Sec. 501. Buy American Provisions.

TITLE I—AMENDMENTS TO THE DEFENSE PRODUCTION ACT OF 1950

PART A—DECLARATION OF POLICY

SEC. 101. DECLARATION OF POLICY.

Section 2 of the Defense Production Act of 1950 (50 U.S.C. App. 2062) is amended to read as follows:

“SEC. 2. DECLARATION OF POLICY.

“(a)(1) The vitality of the industrial and technology base of the United States is a foundation of national security. It provides the industrial and technological capabilities employed to meet national defense requirements, in peacetime and in time of national emergency. In peacetime, the health of the industrial and technological base contributes to the technological superiority of our defense equipment, which is a cornerstone of our national security strategy, and the efficiency with which defense equipment is developed and produced. In times of crisis, a healthy industrial base will be able to effectively provide the graduated response needed to effectively meet the demands of the emergency.

“(2) To meet these requirements, this Act affords to the President an array of authorities to shape defense preparedness programs and to take appropriate steps to maintain and enhance the defense industrial and technological base.

“(b)(1) In view of continuing international problems, the Nation's demonstrated reliance on imports of materials and components, and the need for measures to reduce defense production lead times and bottlenecks, and in order to provide for the national defense and national security, our defense mobilization preparedness effort continues to require the development of preparedness programs, domestic defense industrial base improvement measures, as well as provision for a graduated response to any threatening international or military situation, and the expansion of domestic productive capacity beyond the levels needed to meet the civilian demand. Also required is some diversion of certain materials and facilities from civilian use to military and related purposes.

“(2) These activities are needed in order to improve domestic defense industrial base efficiency and responsiveness, to reduce the time required for industrial mobilization in the event of an attack on the United States or to respond to actions occurring outside the United States which could result in the termination or reduction of the availability of strategic and critical materials, including energy, and which could adversely affect national defense preparedness of the United States. In order to ensure national defense

preparedness, which is essential to national security, it is also necessary and appropriate to assure the availability of domestic energy supplies for national defense needs. To further assure the adequate maintenance of the defense industrial base, to the maximum extent possible such supplies should be augmented through reliance on renewable fuels, such as solar, geothermal, and wind, energy and ethanol and its derivatives, and on energy conservation measures.

“(c)(1) In order to ensure productive capacity in the event of an attack on the United States, it is the policy of the Congress to encourage the geographical dispersal of industrial facilities in the United States to discourage the concentration of such productive facilities within limited geographical areas which are vulnerable to attack by an enemy of the United States. To the maximum extent possible, such dispersal should seek to include such economically depressed regions as urban areas with high unemployment and poverty rates, counties in rural States with high levels of outmigration and job loss, and Indian reservations with severe health and employment problems. To ensure that essential mobilization requirements are met, consideration should also be given to stockpiling strategic materials to the extent that such stockpiling is economical and feasible.

“(2) In the construction of any Government-owned industrial facility, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facility, and in the production of goods and services, under this or any other Act, each department and agency of the executive branch shall apply, under the coordination of the Federal Emergency Management Agency, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographical dispersal of such facilities in the interest of national defense. However, nothing in this paragraph shall preclude the use of existing industrial facilities.

“(3) To ensure the adequacy of productive capacity and supply, executive agencies and departments responsible for defense acquisition shall continuously assess the capability of the domestic defense industrial base to satisfy peacetime requirements as well as increased mobilization production requirements. Such assessments shall specifically evaluate the availability of adequate production sources, including subcontractors and suppliers, materials, skilled labor, and professional and technical personnel. In this context, every effort should be made to foster cooperation between the defense and commercial sectors for research and development and for acquisition of materials, components, and equipment. In furtherance of this policy and to ensure the capability of the domestic defense industrial base, defense contractors should be allowed full recovery of the costs of independent research and development and the preparation of bids and proposals.

“(4) It is the policy of the Congress that plans and programs to carry out this declaration of policy shall be undertaken with due consideration for promoting efficiency and competition.

“(5) It is also necessary to recognize that—

“(A) the domestic defense industrial base is a component part of the core industrial capacity of the Nation; and

“(B) much of the industrial capacity which is relied upon by the Federal Government for military production and other defense-related purposes is deeply and directly influenced by—

“(1) the overall competitiveness of the United States industrial economy; and

“(ii) the ability of United States industry, in general, to produce internationally competitive products and operate profitably while maintaining adequate research and development to preserve that competitive edge in the future, with respect to military and civilian production.

“(6)(A) The domestic defense industrial base is developing a growing dependency on foreign sources for critical components and materials used in manufacturing and assembling major weapons systems for our national defense.

“(B) This dependence is threatening the capability of many critical industries to respond rapidly to defense production needs in the event of war or other hostilities or diplomatic confrontation.

“(C) The inability of United States industry, especially smaller subcontractors and suppliers, to provide vital parts and components and other materials would impair our ability to sustain our Armed Forces in combat for more than a few months.

“(D) In the event our Armed Forces must face an adversary with a numerical advantage, in the context of a conventional war, it is imperative to preserve and strengthen the industrial and technological capabilities of the United States.

“(E) Contracts awarded under provisions of this Act should be awarded to the maximum extent possible to those firms which have not been convicted of defense contract fraud or otherwise debarred or suspended from contracting with the Department of Defense or its constituent agencies.”

PART B—AMENDMENTS TO TITLE I OF THE DEFENSE PRODUCTION ACT

SEC. 111. STRENGTHENING OF DOMESTIC CAPABILITY AND ASSISTANCE FOR SMALL BUSINESSES.

Title I of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.) is amended by adding at the end the following new sections:

“SEC. 107. STRENGTHENING OF DOMESTIC CAPABILITY.

“(a) IN GENERAL.—The President, acting through the Secretary of Defense, shall identify critical components essential for the execution of the national security strategy of the United States in peacetime and during graduated mobilization, and take appropriate actions to protect against unreliable sources for critical components.

“(b) APPROPRIATE ACTIONS.—For purposes of subsection (a), appropriate action may include—

“(1) restricting solicitation for procurement of a critical component to domestic and reliable foreign sources only or to domestic sources only (pursuant to this section and authorities in section 2304(b)(1)(B) or 2304(c)(3) of title 10, United States Code, or any other applicable provision of States);

“(2) stockpiling critical components;

“(3) developing substitutes for critical components; or

“(4) other similar appropriate measures.

“(c) IDENTIFICATION OF CRITICAL COMPONENTS.—At a minimum, critical components shall be identified for all items on the CINC Critical Items List. Additionally, the Department of Defense shall take into account those components identified as critical by a National Security Assessment or Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 when identifying critical components.

SEC. 108. ASSISTANCE FOR SMALL BUSINESSES.

"(a) IN GENERAL.—In providing any assistance authorized for defense contractors and subcontractors under this Act, the President shall provide a strong preference for contractors and subcontractors which are small businesses, as defined by the Administrator of the Small Business Administration. In awarding authorized contracts under this Act, the President shall provide a strong preference for those small businesses located in areas of high unemployment and/or areas that demonstrate a continuing pattern of economic decline as identified by the Secretary of Labor.

(b) MODERNIZATION OF EQUIPMENT.—

"(1) IN GENERAL.—Funds authorized under title III may be set aside to guarantee the purchase or lease of advance manufacturing equipment, and any related services with respect to any such equipment for purposes of this Act.

"(2) SMALL BUSINESS SUBCONTRACTORS.—In considering applications under paragraph (1), the President shall provide a strong preference for smaller subcontractors that—

"(A) have obtained the recommendation—
 "(i) of an agency of the Department of Defense; or

"(ii) pursuant to the efforts of an agency described in clause (i), of the Secretary of Commerce or the Administrator of the Small Business Administration; and

"(B) have arranged to obtain management assistance services in connection with the installation of the advance manufacturing equipment."

SEC. 112. LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.

Section 104 of the Defense Production Act of 1950 (50 U.S.C. App. 2074) is amended to read as follows:

***SEC. 104. LIMITATION ON ACTIONS WITHOUT CONGRESSIONAL AUTHORIZATION.**

"(a) WAGE OR PRICE CONTROLS.—No provision of this Act shall be interpreted as providing for the imposition of wage or price controls without the prior authorization of such action by a joint resolution of Congress.

"(b) CHEMICAL OR BIOLOGICAL WEAPONS.—No provision of title I of this Act shall be exercised or interpreted to require action or compliance by any private person to assist in any way in the production of or other involvement in chemical or biological warfare capabilities unless authorized by the President."

PART C—AMENDMENTS TO TITLE III OF THE DEFENSE PRODUCTION ACT

SEC. 121. EXPANDING THE REACH OF EXISTING AUTHORITIES UNDER TITLE III.

(a) GUARANTEE AUTHORITY.—Section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) is amended—

(1) in subsection (a)(1), by striking "to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense" and inserting "to expedite or expand production and deliveries or services under Government contracts for the procurement of industrial resources or critical technology items essential for the national defense";

(2) by amending subsection (a)(3)(A) to read as follows:

"(A) the guaranteed contract or operation is for industrial resources or a critical technology item which is essential to the national defense";

(3) in subsection (a)(3)(B)—

(A) by striking "Without" and inserting "without"; and

(B) by striking "the capability for the needed material or service" and inserting

"the needed industrial resources or critical technology item";

(4) by amending subsection (a)(3)(D) to read as follows:

"(D) the combination of the United States national defense demand and foreseeable nondefense demand is equal to, or greater than, the output of domestic industrial capability which the President reasonably determines to be available for national defense, including the output to be established through the guarantee.";

(5) in subsection (e)(1)(A), by striking "Except during periods of national emergency declared by the Congress or the President" and inserting "Except as provided in subparagraph (D)";

(6) in subsection (e)(1)(C), by striking "\$25,000,000" and inserting "\$50,000,000"; and

(7) by adding at the end of subsection (e)(1) the following new subparagraph:

"(D) The requirements of subparagraphs (A), (B), and (C) may be waived—

"(i) during periods of national emergency declared by the Congress or the President, or

"(ii) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability.";

(b) LOANS TO PRIVATE BUSINESS ENTERPRISES.—Section 302 of the Defense Production Act of 1950 (50 U.S.C. App. 2092) is amended—

(1) in subsection (a), by striking "for the procurement of materials or the performance of services for the national defense" and inserting "for the procurement of industrial resources or a critical technology item for the national defense";

(2) by amending subsection (b)(2)(D) to read as follows:

"(D) the combination of the United States national defense demand and foreseeable nondefense demand is equal to, or greater than, the output of domestic industrial capability which the President reasonably determines to be available for national defense, including the output to be established through the loan.";

(3) in subsection (c)(1), by striking "No such loan may be made under this section, except during periods of national emergency declared by the Congress or the President" and inserting "Except as provided in paragraph (4), no loans may be made under this section";

(4) in subsection (c)(3), by striking "\$25,000,000" and inserting "\$50,000,000"; and

(5) in subsection (c), by adding at the end the following new paragraph:

"(4) The requirements of paragraphs (1), (2), and (3) of this subsection may be waived during periods of national emergency declared by Congress or the President."

(c) PURCHASES AND PURCHASE COMMITMENTS.—

(1) Section 303(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(a)) is amended to read as follows:

"(a)(1) To assist in carrying out the objectives of this Act, the President may make provision—

"(A) for purchases of or commitments to purchase an industrial resource or a critical technology item, for Government use or resale; and

"(B) for the encouragement of exploration, development, and mining of critical and strategic materials, and other materials.

"(2) Purchases for resale under this subsection shall not include that part of the supply of an agricultural commodity which

is domestically produced except insofar as such domestically produced supply may be purchased for resale for industrial use or stockpiling.

"(3) No commodity purchased under this subsection shall be sold at less than—

"(A) the established ceiling price for such commodity, except that minerals, metals, and materials shall not be sold at less than the established ceiling price, or the current domestic market price, whichever is lower, or

"(B) if no ceiling price has been established, the higher of—

"(i) the current domestic market price for such commodity; or

"(ii) the minimum sale price established for agricultural commodities owned or controlled by the Commodity Credit Corporation as provided in section 407 of the Agricultural Act of 1949.

"(4) No purchase or commitment to purchase any imported agricultural commodity shall specify a delivery date which is more than one year after the expiration of this section.

"(5) Except as provided in paragraph (7), the President may not execute a contract under this subsection unless the President determines that—

"(A) the industrial resource or critical technology item is essential to the national defense;

"(B) without Presidential action under authority of this section, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource or critical technology item in a timely manner;

"(C) purchases, purchase commitments, or other action pursuant to this section are the most cost-effective, expedient, and practical alternative method for meeting the need; and

"(D) the combination of the United States national defense demand and foreseeable nondefense demand for the industrial resource or critical technology item is equal to, or greater than, the output of domestic industrial capability which the President reasonably determines to be available for national defense, including the output to be established through the purchase, purchase commitment, or other action.

"(6) Except as provided in paragraph (7), the President shall take no action under this section unless the industrial resource shortfall which such action is intended to correct has been identified in the Budget of the United States or amendments thereto, submitted to the Congress and accompanied by a statement from the President demonstrating that the budget submission is in accordance with the provisions of the preceding sentence. Any such action may be taken only after 60 days have elapsed after such industrial resource shortfall has been identified pursuant to the preceding sentence. If the taking of any action or actions under this section to correct an industrial resource shortfall would cause the aggregate outstanding amount of all such actions for such industrial resource shortfall to exceed \$50,000,000, any such action or actions may be taken only if specifically authorized by law.

"(7) The requirements of paragraphs (1) through (6) may be waived—

"(A) during periods of national emergency declared by Congress or the President; or

"(B) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology shortfall that would severely impair national defense capability."

(2) Section 303(b) of the Defense Production Act of 1950 (50 U.S.C. 2093(b)) is amended by striking "September 30, 1995" and inserting "a date that is not more than 10 years from the date such purchase, purchase commitment, or sale was initially made".

(d) DEVELOPING SUBSTITUTES.—Section 303(g) of the Defense Production Act of 1950 (50 U.S.C. App. 2093(g)) is amended by inserting before the period the following: "and for the production readiness of critical technology products and processes".

SEC. 122. DEFENSE PRODUCTION ACT FUND.

Section 304 of the Defense Production Act of 1950 (50 U.S.C. App. 2094) is amended to read as follows:

"SEC. 304. DEFENSE PRODUCTION ACT FUND.

"(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a separate fund to be known as the Defense Production Act Fund (hereafter in this section referred to as 'the Fund').

"(b) MONEYS IN FUND.—The following moneys shall be credited to the Fund:

"(1) All moneys appropriated after September 30, 1991, for the Fund, as authorized by section 711(c).

"(2) All moneys received after September 30, 1991, on transactions entered into pursuant to section 303.

"(c) USE OF FUND.—The Fund shall be available to carry out the provisions and purposes of this title, subject to the limitations set forth in this Act and in appropriations Acts.

"(d) DURATION OF FUND.—Moneys in the Fund shall remain available until expended.

"(e) FUND BALANCE.—The Fund balance at the close of each fiscal year shall not exceed \$400,000,000, excluding any moneys appropriated to the Fund during that fiscal year or obligated funds. If at the close of any fiscal year the Fund balance exceeds such amount, the amount in excess of \$400,000,000 shall be paid into the general fund of the Treasury.

"(f) FUND MANAGER.—The Secretary of Defense shall designate a Fund manager. The duties of the Fund manager shall include—

"(1) determining the liability of the Fund in accordance with subsection (g);

"(2) ensuring the visibility and accountability of transactions engaged in through the Fund to the Secretaries of Defense, Treasury, and Commerce, and to the Congress; and

"(3) reporting to Congress each year regarding fund activities during the previous fiscal year.

"Any individual involved in the operation and/or oversight of this fund shall submit to the Secretary of Defense and the Secretary of Commerce annually during such individual's tenure in such positions—

"(1) a statement disclosing personal income and finances which shall be consistent with federal financial disclosure laws relating to federal employees, and;

"(2) a statement certifying that no conflict of interest exists with the position occupied by such individual and describing any circumstances that may reasonably be perceived as a conflict of interest, which shall be consistent with federal laws relating to conflict of interest.

"(g) LIABILITIES AGAINST FUND.—When any agreement entered into pursuant to this title after December 31, 1991, imposes contingent liabilities upon the United States, such liability shall be considered an obligation against the Fund."

SEC. 123. DECLARATION OF OFFSET POLICY.

(a) IN GENERAL.—Recognizing that certain offsets for military exports are economically

inefficient and market distorting, and mindful of the need to minimize the adverse effects of offsets in military exports while ensuring that the ability of United States firms to compete for military export sales is not undermined, it is the policy of the Congress that—

(1) no agency of the United States Government shall encourage, enter directly into, or commit United States firms to any offset arrangement in connection with the sale of defense goods or services to foreign governments;

(2) United States Government funds shall not be used to finance offsets in security assistance transactions except in accordance with policies and procedures that were in existence as of September 30, 1991;

(3) nothing in this section shall prevent agencies of the United States Government from fulfilling obligations incurred through international agreements entered into before September 30, 1991; and

(4) the decision whether to engage in offsets, and the responsibility for negotiating and implementing offset arrangements, resides with the companies involved.

(b) PRESIDENTIAL APPROVAL OF EXCEPTIONS.—It is the policy of the Congress that the President may approve an exception to the policy stated by subsection (a) after receiving the recommendation of the National Security Council.

(c) CONSULTATION.—It is the policy of the Congress that the President shall designate the Secretary of Defense, in coordination with the Secretary of State, to lead an interagency team to consult with foreign nations on limiting the adverse effects of offsets in defense procurement. The President shall transmit an annual report on the results of these consultations to the Congress as part of the report required under section 309(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2099(a)).

SEC. 124. CIVIL-MILITARY INTEGRATION.

Title III of the Defense Production Act of 1950 is amended by adding at the end the following new section:

"SEC. 310. CIVIL-MILITARY INTEGRATION.

"An important purpose of this title is the creation of production capacity that will remain economically viable after guarantees and other assistance provided under this title have expired."

SEC. 125. TESTING, QUALIFICATION, AND INCORPORATION OF MATERIALS FOR USE FOR WEAPON SYSTEMS AND DEVELOPMENT PROGRAMS.

Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091 et seq.) is amended by adding at the end the following new section:

"SEC. 311. TESTING, QUALIFICATION, AND INCORPORATION OF MATERIALS FOR USE FOR WEAPON SYSTEMS AND DEVELOPMENT PROGRAMS.

"The President shall, within 12 months after the date of the enactment of the Defense Production Act Amendments of 1950, take those measures necessary to ensure—

"(1) that all materials manufactured with assistance provided under section 301, 302, or 303 are tested for qualification for use in the production of existing and future weapon systems and existing and future development programs, and

"(2) that all materials manufactured with assistance provided under section 301, 302, or 303 and qualified under paragraph (1) are used and incorporated into the production of existing and future weapon systems and existing and future development programs."

PART D—AMENDMENTS TO TITLE VII OF THE DEFENSE PRODUCTION ACT

SEC. 131. SMALL BUSINESS.

Section 701 of the Defense Production Act of 1950 (50 U.S.C. App. 2151) is amended to read as follows:

"SEC. 701. SMALL BUSINESS.

"(a) PARTICIPATION.—Small business concerns, including businesses owned by women and business owned by minorities, shall be given the maximum practicable opportunity to participate as contractors, and subcontractors at various tiers, in all programs to maintain and strengthen the Nation's industrial base and technology base undertaken pursuant to this Act.

"(b) ADMINISTRATION OF ACT.—In administering the programs, implementing regulations, policies, and procedures under this Act, requests, applications, or appeals from small business concerns, including business concerns owned by women and minorities, shall, to the maximum extent practicable, be expeditiously handled.

"(c) ADVISORY COMMITTEE PARTICIPATION.—Representatives of small business concerns, including business concerns owned by women and minorities, shall be afforded the maximum opportunity to participate in such advisory committees as may be established pursuant to the provisions of this Act.

"(d) INFORMATION.—Information about the Act and activities under the Act shall be made available to small business concerns, including business concerns owned by women and minorities.

"(e) ALLOCATIONS UNDER SECTION 101.—Whenever the President makes a determination to exercise any authority to allocate any material pursuant to section 101 of this Act, small business concerns, including business concerns owned by women and minorities, shall be accorded, so far as practicable, a fair share of such material, in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to new small business concerns, including business concerns owned by women and minorities, or individual firms facing undue hardship."

SEC. 132. DEFINITIONS.

Section 702 of the Defense Production Act of 1950 (50 U.S.C. App. 2152) is amended to read as follows:

"SEC. 702. DEFINITIONS.

"As used in this Act—

"(1) CRITICAL COMPONENT.—The term 'critical component' includes such components, subsystems, systems, and related special tooling and test equipment essential to the production, repair, maintenance, or operation of weapon systems or other items of military equipment as are identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States. Additionally, the Secretary shall take into account those components identified as critical by a National Security Assessment or Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962 when identifying critical components.

"(2) CRITICAL INDUSTRY FOR NATIONAL SECURITY.—The term 'critical industry for national security' means any industry (or industry sector) identified pursuant to section 2503(6) of title 10, United States Code, and such other industries or industry sectors as may be designated by the President as essential to provide industrial resources required for the execution of the national security strategy of the United States."

"(3) **CRITICAL TECHNOLOGY.**—The term 'critical technology' includes any technology that is included in 1 or more of the plans submitted pursuant to section 2508 of title 10, United States Code (unless subsequently deleted), or such other emerging or dual use technology as may be designated by the President.

"(4) **CRITICAL TECHNOLOGY ITEM.**—The term 'critical technology item' shall mean materials directly employing, derived from, or utilizing a critical technology.

"(5) **DEFENSE CONTRACTOR.**—The term 'defense contractor' means any person who enters into a contract with the United States to furnish materials, industrial resources, or a critical technology, or to perform services for the national defense.

"(6) **DOMESTIC DEFENSE INDUSTRIAL BASE.**—The term 'domestic defense industrial base' means domestic sources which are providing, or which would be reasonably expected to provide, materials or services to meet national defense requirements during war or national emergency.

"(7) **DOMESTIC SOURCE.**—The term 'domestic source' means a business entity—

"(A) that performs in the United States or Canada substantially all of the research and development, engineering, manufacturing, and production activities required of such firm under a contract with the United States relating to a critical component or a critical technology item, and

"(B) that procures from entities described in subparagraph (A) substantially all of the components and assemblies required under a contract with the United States relating to a critical component or critical technology item.

"(8) **ESSENTIAL WEAPON SYSTEM.**—The term 'essential weapon system' shall mean a major weapon system and other items of military equipment identified by the Secretary of Defense as being essential to the execution of the national security strategy of the United States.

"(9) **FACILITIES.**—The term 'facilities' includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

"(10) **FOREIGN SOURCE.**—The term 'foreign source' means a business entity other than a 'domestic source'.

"(11) **INDUSTRIAL RESOURCES.**—The term 'industrial resources' means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) needed to establish or maintain an efficient and modern national defense industrial capacity.

"(12) **MATERIALS.**—The term 'materials' includes—

"(A) any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

"(B) any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

"(13) **NATIONAL DEFENSE.**—The term 'national defense' means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity.

"(14) **PERSON.**—The term 'person' includes an individual, corporation, partnership, asso-

ciation, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

"(15) **SERVICES.**—The term 'services' includes any effort that is needed or incidental to—

"(A) the development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item, or

"(B) the construction of facilities."

SEC. 133. REGULATIONS AND ORDERS.

Section 704 of the Defense Production Act of 1950 (50 U.S.C. App. 2154) is amended to read as follows:

"SEC. 704. REGULATIONS AND ORDERS.

"(a) **IN GENERAL.**—Subject to section 709 and subsection (b), the President may prescribe such regulations and issue such orders as the President may determine to be appropriate to carry out the provisions of this Act.

"(b) **LIMITATIONS.**—The President may not prescribe any regulation, or issue any order, to carry out the provisions of this Act that is inconsistent with or conflicts with the Federal Acquisition Regulation issued pursuant to section 25 of the Office of Federal Procurement Policy Act."

SEC. 134. INFORMATION ON THE DEFENSE INDUSTRIAL BASE.

The Defense Production Act of 1950 (50 U.S.C. App. 2061 et seq.) is amended by adding at the end the following new section:

"SEC. 722. DEFENSE INDUSTRIAL BASE INFORMATION SYSTEM.

"(a) **ESTABLISHMENT REQUIRED.**—

"(1) **IN GENERAL.**—The President, acting through the Secretary of Defense and the heads of such other Federal agencies as the President may determine to be appropriate, shall provide for the establishment of an information system on the domestic defense industrial base which—

"(A) meets the requirements of this section; and

"(B) includes a systematic continuous procedure to collect and analyze information necessary to evaluate—

"(i) the adequacy of domestic industrial capacity and capability in critical components, technologies, and technology items essential to the national security of the United States;

"(ii) dependence on foreign sources for industrial parts, components, and technologies essential to defense production; and

"(iii) the reliability of foreign source supply of critical components and technologies.

"(2) **INCORPORATION OF DINET.**—The defense information network (DINET), as established and maintained by the Secretary of Defense on the date of the enactment of the Defense Production Act Amendments of 1991, shall be incorporated into the system established pursuant to paragraph (1).

"(3) **USE OF INFORMATION.**—Information collected and analyzed under the procedure established pursuant to paragraph (1) shall constitute a basis for making any determination to exercise any authority under this Act and a procedure for using such information shall be integrated into the decisionmaking process with regard to the exercise of any such authority.

"(b) **SOURCES OF INFORMATION.**—

"(1) **FOREIGN DEPENDENCE.**—

"(A) **SCOPE OF INFORMATION REVIEW.**—The procedure established to meet the requirement of subsection (a)(1)(B)(ii) shall address defense production with respect to the operations of prime contractors and at least the first 2 tiers of subcontractors, or when a critical component (as that term is defined by section 702(1)) is identified at a lower tier.

"(B) **USE OF EXISTING DATA COLLECTION AND REVIEW CAPABILITIES.**—To the extent feasible and appropriate, the President shall build upon existing methods of data collection and analysis and shall integrate information available from intelligence agencies with respect to industrial and technological conditions in foreign countries.

"(C) **INITIAL EMPHASIS ON PRIORITY LISTS.**—In establishing the procedure referred to in subparagraph (A), the Secretary may place initial emphasis on the production of parts and components relating to priority lists such as the Commanders' in Chief Critical Items List, those components identified as critical by a National Security Assessment or Presidential determination as a result of a petition filed under section 232 of the Trade Expansion Act of 1962, and the technologies identified as critical in the annual defense critical technologies plan submitted pursuant to section 2508 of title 10, United States Code.

"(2) **PRODUCTION BASE ANALYSIS.**—

"(A) **TOP-TO-BOTTOM REVIEW.**—Effective on or after October 1, 1991, the analysis of the production base for any major procurement project which is included in the information system maintained pursuant to subsection (a) shall, in addition to any information and analyses the President may require—

"(i) include a review of all levels of acquisition and production, beginning with any raw material, special alloy, or composite material involved in the production and ending with the completed product;

"(ii) identify each contractor and subcontractor at each level of acquisition and production with respect to such project which represents a potential for delaying or preventing the production and acquisition, including the identity of each contractor or subcontractor whose contract qualifies as a foreign source or sole source contract and any supplier which is a foreign or sole source for any item required in the production, including critical components (as that term is defined by section 702(1)); and

"(iii) include information to permit appropriate management of accelerated or surge production.

"(B) **INITIAL REQUIREMENT FOR STUDY OF PRODUCTION BASES FOR NOT MORE THAN 6 MAJOR WEAPON SYSTEMS.**—In establishing the information system under subsection (a), the President, acting through the Secretary of Defense, shall require an analysis of the production base for not more than 2 weapons of each military department which are major systems (as defined in section 2302(5) of title 10, United States Code). Each major system study shall include in the analysis a determination of critical components of that system.

"(3) **CONSULTATION REGARDING THE CENSUS OF MANUFACTURERS.**—

"(A) **IN GENERAL.**—The Secretary of Commerce, acting through the Bureau of the Census, shall consult with the Secretary of Defense and the Director of the Federal Emergency Management Agency with a view to improving the application of information derived from the Census of Manufacturers to the purposes of this section.

"(B) **ISSUES TO BE ADDRESSED.**—Such consultations shall address improvements in the level of detail, timeliness, and availability of input and output analyses derived from the Census of Manufacturers necessary to facilitate the purposes of this section.

"(c) **STRATEGIC PLAN FOR DEVELOPING COMPREHENSIVE SYSTEM.**—

"(1) **PLAN REQUIRED.**—Not later than December 31, 1992, the President shall provide

for the establishment of and report to Congress on a strategic plan for developing a cost-effective, comprehensive information system capable of identifying on a timely, ongoing basis vulnerability in critical components, technologies, and technology items.

"(2) ASSESSMENT OF CERTAIN PROCEDURES.—In establishing plan under paragraph (1), the President shall assess the performance and cost-effectiveness of procedures implemented under subsection (b) and shall seek to build upon such procedures as appropriate.

"(d) CAPABILITIES OF SYSTEM.—

"(1) IN GENERAL.—In connection with the establishment of the information system under subsection (a), the President shall direct the Secretary of Defense, the Secretary of Commerce, and the heads of such other Federal agencies as the President may determine to be appropriate to—

"(A) consult with each other and provide such information, assistance, and cooperation as may be necessary to establish and maintain the information system in a manner which allows the coordinated and efficient entry of information on the domestic defense industrial base into, and the withdrawal, subject to the protection of proprietary data, of information on the domestic defense industrial base from the system on an on-line interactive basis by the Department of Defense;

"(B) assure access to the information on the system, as appropriate, by all participating Federal agencies, including each military department;

"(C) coordinate standards, definitions, and specifications for information on defense production which is collected by the Department of Defense and the military departments so that such information can be used by any Federal agency or department which the President determines to be appropriate; and

"(D) assure that the information in the system is updated, as appropriate, with the active assistance of the private sector.

"(2) TASK FORCE ON MILITARY-CIVILIAN PARTICIPATION.—Upon the establishment of the information system under subsection (a), the President shall convene a task force consisting of the Secretary of Defense, the Secretary of Commerce, the Secretary of each military department, and the heads of such other Federal agencies and departments as the President may determine to be appropriate to establish guidelines and procedures to ensure that all Federal agencies and departments which acquire information with respect to the domestic defense industrial base are fully participating in the system, unless the President determines that all appropriate Federal agencies and departments, including each military department, are voluntarily providing information which is necessary for the system to carry out the purposes of this Act and chapter 148 of title 10, United States Code.

"(e) REPORT ON SUBCONTRACTOR AND SUPPLIER BASE.—

"(1) REPORT REQUIRED.—At the times required under paragraph (4), the President shall issue a report which includes—

"(A) a list of critical components, technologies, and technology items for which there is found to be inadequate domestic industrial capacity or capability; and

"(B) an assessment of those subsectors of the economy of the United States which—

"(i) support production of any component, technology, or technology item listed pursuant to paragraph (1); or

"(ii) have been identified as being critical to the development and production of com-

ponents required for the production of weapons, weapon systems, and other military equipment essential to the national defense.

"(2) MATTERS TO BE CONSIDERED.—The assessment made under paragraph (1)(B) shall consider—

"(A) the capacity of domestic sources, especially commercial firms, to fulfill peacetime requirements and graduated mobilization requirements for various items of supply and services;

"(B) any trend relating to the capabilities of domestic sources to meet such peacetime and mobilization requirements;

"(C) the extent to which the production or acquisition of various items of military material is dependent on foreign sources; and

"(D) any reason for the decline of the capabilities of selected sectors of the United States economy necessary to meet peacetime and mobilization requirements, including stability of defense requirements, acquisition policies, vertical integration of various segments of the industrial base, superiority of foreign technology and production efficiencies, foreign government support of non-domestic sources, and offset arrangements.

"(3) POLICY RECOMMENDATIONS.—The report may provide specific policy recommendations to correct deficiencies identified in the assessment, which would help to strengthen domestic sources.

"(4) TIME FOR ISSUANCE.—The report required by paragraph (1) shall be issued not later than July 1 of each odd-numbered year which begins after 1991, based upon data from the prior fiscal year and such prior fiscal years as may be appropriate.

"(5) RELEASE OF UNCLASSIFIED REPORT.—The report required by this subsection may be classified. An unclassified version of the report shall be available to the public.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President for purposes of this section not more than \$10,000,000, to remain available until expended, of which not more than \$3,000,000 shall be available for the purposes of subsection (b)(2)."

SEC. 135. PUBLIC PARTICIPATION IN RULE-MAKING.

(a) IN GENERAL.—Section 709 of the Defense Production Act of 1950 (50 U.S.C. 2159) is amended to read as follows:

"SEC. 709. PUBLIC PARTICIPATION IN RULE-MAKING.

"(a) EXEMPTION FROM THE ADMINISTRATIVE PROCEDURE ACT.—Any regulation prescribed or order issued under this Act shall not be subject to sections 551 through 559 of title 5, United States Code.

"(b) OPPORTUNITY FOR NOTICE AND COMMENT.—

"(1) IN GENERAL.—Except as provided in subsection (c), any regulation prescribed or order issued under this Act shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5, United States Code.

"(2) WAIVER FOR TEMPORARY PROVISIONS.—The requirements of paragraph (1) may be waived, if—

"(A) the officer authorized to prescribe the regulation or issue the order finds that urgent and compelling circumstances make compliance with such requirements impracticable;

"(B) the regulation is prescribed or order is issued on a temporary basis; and

"(C) the publication of such temporary regulation or order is accompanied by the find-

ing made under clause (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days of public comment before any regulation or order becomes final.

"(3) All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation or order shall contain written responses to such comments.

"(c) PUBLIC COMMENT ON PROCUREMENT REGULATIONS.—Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this Act shall be subject to section 22 of the Office of Federal Procurement Policy Act."

(b) SCOPE OF APPLICATION.—Section 709 of the Defense Production Act of 1950 (50 U.S.C. App. 2159), as amended by subsection (a) of this section, shall not apply to any regulation prescribed or order issued in proposed or final form on or before the date of enactment of this Act.

PART E—TECHNICAL AMENDMENTS

SEC. 141. TECHNICAL CORRECTION.

Section 301(e)(2)(B) of the Defense Production Act of 1950 (50 U.S.C. App. 2091(e)(2)(B)) is amended by striking "and to the Committees on Banking and Currency of the respective Houses" and inserting "and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives".

SEC. 142. INVESTIGATIONS; RECORDS; REPORTS; SUBPOENAS.

Section 705 of the Defense Production Act of 1950 (50 U.S.C. App. 2155) is amended—

(1) in subsection (a), by striking "subpena" and inserting "subpoena";

(2) by redesignating subsections (c), (d), (e), and (f) as subsections (b), (c), (d), and (e), respectively;

(3) in subsection (c) (as redesignated by paragraph (2)), by striking "\$1,000" and inserting "\$10,000"; and

(4) in subsection (d) (as redesignated by paragraph (2)), by striking all after the first sentence.

SEC. 143. EMPLOYMENT OF PERSONNEL.

(a) NOTICE OF APPOINTMENT AND FINANCIAL DISCLOSURE FOR EMPLOYEES SERVING WITHOUT COMPENSATION.—Section 710(b)(6) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(b)(6)) is amended to read as follows:

"(6) NOTICE AND FINANCIAL DISCLOSURE REQUIREMENTS.—

"(A) PUBLIC NOTICE OF APPOINTMENT.—The head of any department or agency who appoints any individual under this subsection shall publish a notice of such appointment in the Federal Register, including the name of the appointee, the employing department or agency, the title of the appointee's position, and the name of the appointee's private employer.

"(B) FINANCIAL DISCLOSURE.—Any individual appointed under this subsection who is not required to file a financial disclosure report pursuant to section 101 of the Ethics in Government Act of 1978, shall file a confidential financial disclosure report pursuant to section 107 of such Act with the appointing department or agency."

(b) TECHNICAL AMENDMENTS.—Section 710(b) of the Defense Production Act of 1950 (50 U.S.C. App. 2160(b)) is amended—

(1) in paragraph (7)—

(A) by striking "Chairman of the United States Civil Service Commission" and in-

serting "Director of the Office of Personnel Management"; and

(B) by striking "and the Joint Committee on Defense Production"; and

(2) in paragraph (8), by striking "transportation and not to exceed \$15 per diem in lieu of subsistence while away from their homes and regular places of business pursuant to such appointment" and inserting "reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions for which they were appointed in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code".

SEC. 144. TECHNICAL CORRECTION.

Section 711(a)(1) of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended by striking "Bureau of the Budget" and inserting "Office of Management and Budget".

PART F—REPEALERS AND CONFORMING AMENDMENTS

SEC. 151. SYNTHETIC FUEL ACTION.

Section 307 of the Defense Production Act of 1950 (50 U.S.C. App. 2097) is amended—

(1) in subsection (b), by striking the 2d sentence; and

(2) by striking subsection (c) and all that follows through the end of the section.

SEC. 152. REPEAL OF INTEREST PAYMENT PROVISIONS.

Section 711 of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended—

(1) by striking subsection (b),

(2) in subsection (a)—

(A) by striking "(a)(1) Except as provided in paragraph (2) and paragraph (4)" and inserting "(a) Except as provided in subsection (c)",

(B) in the parenthetical by striking "and for the payment of interest under subsection (b) of this section",

(C) by striking paragraph (2),

(D) by redesignating paragraph (3) as subsection (b), and

(E) in paragraph (4)—

(i) by striking subparagraph (B), and

(ii) by redesignating the remainder of paragraph (4) as subsection (c).

SEC. 153. JOINT COMMITTEE ON DEFENSE PRODUCTION.

Section 712 of the Defense Production Act of 1950 (50 U.S.C. App. 2162) is repealed.

SEC. 154. PERSONS DISQUALIFIED FOR EMPLOYMENT.

Section 716 of the Defense Production Act of 1950 (50 U.S.C. App. 2165) is repealed.

SEC. 155. FEASIBILITY STUDY ON UNIFORM COST ACCOUNTING STANDARDS; REPORT SUBMITTED.

Section 718 of the Defense Production Act of 1950 (50 U.S.C. App. 2167) is repealed.

SEC. 156. NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES.

Section 720 of the Defense Production Act of 1950 (50 U.S.C. App. 2169) is repealed.

PART G—REAUTHORIZATION OF SELECTED PROVISIONS

SEC. 161. AUTHORIZATION OF APPROPRIATIONS.

Section 711(c) of the Defense Production Act of 1950 (as amended by section 152 of this Act) is amended to read as follows:

"(c) There are authorized to be appropriated for each of fiscal years 1992, 1993, and 1994 not to exceed \$200,000,000 to carry out the provisions of title III of this Act."

SEC. 162. EXTENSION OF PROGRAM.

The 1st sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking "September 30, 1991" and inserting "September 30, 1994".

SEC. 163. QUADRENNIAL REPORT.

Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170) is amended by adding at the end the following new subsection:

"(1) QUADRENNIAL REPORT.—

"(A) IN GENERAL.—Not later than the date which is 1 year after the date of the enactment of the Defense Production Act Amendments of 1991, and every 4 years after that date, the Secretary of the Treasury shall complete and submit to the Congress a report which—

"(A) evaluates whether there is credible evidence of a coordinated strategy by one or more countries or companies to acquire United States companies, or significant control of United States industries, involved in research, development, or production of critical technologies for which the United States is a leading producer; and

"(B) evaluates whether there are industrial espionage activities directed by foreign governments against private United States companies for the purpose of obtaining commercial secrets related to critical technologies.

"(2) CLASSIFIED REPORTS.—

"(A) IN GENERAL.—The reports required by this subsection may be classified.

"(B) UNCLASSIFIED VERSIONS.—An unclassified version of each report required by this subsection shall be available to the public."

TITLE II—ADDITIONAL PROVISIONS TO IMPROVE INDUSTRIAL PREPAREDNESS

SEC. 201. DISCOURAGING UNFAIR TRADE PRACTICES.

(a) SUSPENSION OR DEBARMENT AUTHORIZED.—Subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) shall be amended to specify the circumstances under which a contractor, who has engaged in an unfair trade practice, as defined in subsection (b), may be found to presently lack such business integrity or business honesty that seriously and directly affects the responsibility of the contractor to perform any contract awarded by the Federal Government or perform a subcontract under such a contract.

(b) DEFINITIONS.—For purposes of this section, the term "unfair trade practice" means the commission of any of the following acts by a contractor:

(1) An unfair trade practice, as determined by the International Trade Commission, for a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordinating Committee" for purposes of the Export Administration Act of 1979 or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the department or the head of the agency to which such certificate was furnished.

SEC. 202. EVALUATION OF DOMESTIC DEFENSE INDUSTRIAL BASE POLICY.

(a) CONGRESSIONAL COMMISSION ON THE EVALUATION OF DEFENSE INDUSTRIAL BASE POLICY ESTABLISHED.—There is hereby established a commission to be known as the Congressional Commission on the Evaluation of the Defense Industrial Base Policy (hereafter in this section referred to as the "Commission").

(b) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall develop criteria for maintaining the strength of the domestic defense industrial base for purposes of supporting the national security strategy of the President.

(2) CONSIDERATION OF AGENCY PROCEDURES AND ACTIVITIES.—In developing criteria under paragraph (1), the Commission shall consider, with respect to each Federal agency and department which has any responsibility for maintaining the strength of the domestic defense industrial base—

(A) the extent to which the statutory authority, policies, regulations, organizational arrangements, plans, programs, and budgets of such agency or department are adequate for the purpose of maintaining the strength of the domestic defense industrial base; and

(B) the degree to which such authority, policies, regulations, arrangements, plans, programs, and budgets are being effectively implemented and sufficiently coordinated (within the agency or department and with other Federal agencies and departments).

(3) EVALUATION OF CIVIL-MILITARY INTEGRATION.—The Commission, in developing criteria under paragraph (1) and considering agency procedures and activities under paragraph (2) shall evaluate the feasibility of integrating defense research, development, production, acquisition, and other relevant contracting activities with similar activities in the commercial sector, and the degree to which such integration is being implemented by the agency or department.

(c) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members as follows:

(A) 3 members appointed by the Speaker of the House of Representatives (2 of whom shall be appointed upon the recommendation of the majority leader of the House of Representatives and 1 of whom shall be appointed upon the recommendation of the minority leader of the House of Representatives) from among individuals who are especially qualified to serve on the Commission by reason of their education, training, or experience.

(B) 3 members appointed by the President pro tempore of the Senate (2 of whom shall be appointed upon the recommendation of the majority leader of the Senate and 1 of whom shall be appointed upon the recommendation of the minority leader of the Senate) from among individuals who are especially qualified to serve on the Commission by reason of their education, training, or experience.

(C) 3 members appointed by a majority of the members appointed under subparagraphs (A) and (B) from among individuals who are especially qualified to serve on the Commission by reason of their education, training, or experience.

(2) TERMS.—

(A) IN GENERAL.—Each member shall be appointed for the life of the Commission.

(B) VACANCY.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(3) PROHIBITION ON COMPENSATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), members of the Commission shall serve without pay.

(B) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(4) QUORUM.—A majority of the members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(5) CHAIRPERSON.—The Chairperson of the Commission shall be elected by the members of the Commission from among the individuals appointed under paragraph (1)(C).

(6) MEETINGS.—The Commission shall meet at the call of the Chairperson or a majority of the members.

(d) POWERS OF COMMISSION.—

(1) HEARINGS AND SESSIONS.—

(A) IN GENERAL.—The Commission may, for the purpose of carrying out this section, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate.

(B) ADMINISTRATION OF OATHS.—The Commission may administer oaths or affirmations to witnesses appearing before the Commission.

(2) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take.

(3) OBTAINING OFFICIAL DATA.—

(A) AUTHORITY TO OBTAIN.—Notwithstanding any provision of section 552a of title 5, United States Code, the Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out this Act.

(B) PROCEDURE.—Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish the information requested to the Commission.

(C) USE OF INFORMATION.—The Commission shall be subject to the same limitations with respect to the use or disclosure of any confidential or privileged information, trade secrets, or other proprietary or business-sensitive information which is obtained from any department or agency under this subsection as are applicable to the use or disclosure of such information or secrets by such department or agency.

(4) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(5) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(e) STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.—

(1) STAFF.—Subject to such regulations as the Commission may prescribe and with the approval of the Commission, the Chairperson may appoint and fix the pay of such personnel as the Chairperson considers appropriate.

(2) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3) EXPERTS AND CONSULTANTS.—Subject to such regulations as the Commission may prescribe, the Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the annual rate of basic pay payable for GS-18 of the General Schedule.

(4) STAFF OF FEDERAL AGENCIES.—Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission

to assist it in carrying out its duties under this Act.

(f) DOMESTIC DEFENSE INDUSTRIAL BASE DEFINED.—For the purposes of this section, the term "domestic defense industrial base" means—

(1) the industries in the United States and Canada which at any time are providing national defense materials and services; and

(2) the industries in the United States and Canada which reasonably would be expected to provide national defense materials and services in a time of emergency or war.

(g) REPORT.—The Commission shall submit to the Congress and the President—

(1) an interim report at the end of the 1-year period beginning on the date the Commission first meets with a majority of members present; and

(2) a final report not later than September 1, 1993, on the findings of the Commission under this section with respect to the domestic defense industrial base, together with such recommendations for legislative, administrative, or policy action as the Commission may determine to be appropriate.

(h) TERMINATION.—The Commission shall cease to exist on September 30, 1994.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal years 1992, 1993, and 1994 an amount not to exceed \$500,000 to carry out the purposes of this section.

TITLE III—AMENDMENT TO RELATED LAWS

SEC. 301. ENERGY SECURITY.

Section 203 of the Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. 1143) (relating to period of guaranties and interest assistance) is amended by striking "1990" and inserting "1993".

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

This Act shall take effect on September 30, 1991.

TITLE V—BUY AMERICAN PROVISIONS

SEC. 501. BUY AMERICAN PROVISIONS.

(A) The Secretary shall insure that the requirements of the Buy American Act of 1933 as amended apply to all procurements under this Act.

(B) PROHIBITION AGAINST FRAUDULENT USE OF "MADE IN AMERICA" LABELS.—If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any produce sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract made with funds authorized under this title pursuant to the debarment suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "A bill to reauthorize the Defense Production Act of 1950, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 3039) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 347

Mr. CARPER. Mr. Speaker, I move that the House insist on its amend-

ment to the Senate bill, S. 347, and request a conference with the Senate thereon.

The SPEAKER pro tempore (Mr. McNULTY). Without objection, the motion is agreed to.

Mr. WALKER. Mr. Speaker, reserving the right to object, it is very hard to hear. We seem to be taking specific actions here.

What was the unanimous-consent request of the gentleman from Delaware?

Mr. WYLIE. Mr. Speaker, if the gentleman will yield, it was a motion to go to conference, may I say to the gentleman from Pennsylvania.

Mr. WALKER. No, I do not think so. It sounded to me like an amendment.

The SPEAKER pro tempore. It was a motion to go to conference. It was not a unanimous-consent request that the gentleman from Delaware made; it was done pursuant to a rule.

Mr. WALKER. Mr. Speaker, I thought I heard something about an amendment.

I would yield to the gentleman for an explanation, but I cannot hear what is being said.

The SPEAKER pro tempore. Can the gentleman hear the Chair?

Mr. WALKER. Yes, I can, but barely, Mr. Speaker. If we could have order in the House, it would certainly be helpful.

Mr. Speaker, I will be happy, under my reservation, to yield to the gentleman from Delaware so he may explain to me just what we are about to do here.

Mr. CARPER. Mr. Speaker, I thank the gentleman for yielding.

Earlier in this Congress the Senate passed a 3-year reauthorization of the Defense Production Act, and that was S. 347. Last week the House of Representatives passed its version of the reauthorization of the Defense Production Act. With this motion today, we are simply going to conference. We are taking from the Speaker's desk the Senate bill. We are inserting our bill into that Senate bill, we are asking to go to conference, and we are asking the Speaker to name conferees. This has been cleared with the gentleman from Ohio [Mr. WYLIE] and the gentleman from Pennsylvania [Mr. RIDGE], and I do not believe there is any point of controversy here.

Mr. WALKER. I understand that from the gentleman from Ohio. I thought I heard in the gentleman's motion, though, that it included amendments.

Mr. CARPER. What I said was, and I repeat: Pursuant to the provisions of House Resolution 231, I move that the House insist on its amendment to the Senate bill, S. 347, and request a conference with the Senate thereon.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Without objection, the motion is agreed to.

There was no objection.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees and reserves the right to appoint additional conferees:

Suggested conferees on S. 347—Defense Production Act Amendments of 1991.

From the Committee on Banking, Finance and Urban Affairs, for consideration of the Senate bill, and the House amendment, and modifications committed to conference: Mr. CARPER, Mr. LAFALCE, Ms. OAKAR, and Messrs. VENTO, KANJORSKI, RIDGE, PAXON, and HANCOCK.

As additional conferees from the Committee on Armed Services, for consideration of sections 111, 123-24, 136, and 201-03 of the Senate bill, and sections 111, 123, 134, and 202 of the House amendment, and modifications committed to conference: Messrs. ASPIN, MAVROULES, SISISKY, DICKINSON, and BATEMAN.

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 163, 301, and 403-06 of the Senate bill, and section 163 of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. MARKEY, Mrs. COLLINS of Illinois, Mr. LENT, and Mr. RINALDO.

As additional conferees from the Committee on Government Operations for consideration of sections 111, 137, and titles II and V of the Senate bill, and sections 111, 135, 201, and 202 of the House amendment, and modifications committed to conference: Messrs. CONYERS, ENGLISH, WISE, HORTON, and KYL.

As additional conferees from the Committee on the Judiciary, for consideration of section 138 of the Senate bill, and modifications committed to conference: Messrs. BROOKS, EDWARDS of California, CONYERS, FISH, and MOORHEAD.

As additional conferees from the Committee on Ways and Means, for consideration of sections 402-04 of the Senate bill, and modifications committed to conference: Messrs. ROSTENKOWSKI, GIBBONS, JENKINS, ARCHER, and CRANE.

There was no objection.

WITHDRAWAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE RESOLUTION 194

Mr. ROGERS. Mr. Speaker, I ask unanimous consent to remove my name as a cosponsor of House Resolution 194.

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

There was no objection.

WITHDRAWAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE RESOLUTION 194

Mr. HAMMERSCHMIDT. Mr. Speaker, I ask unanimous consent to remove my name as a cosponsor of House Resolution 194.

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

There was no objection.

LEGISLATIVE PROGRAM

(Mr. GINGRICH asked and was given permission to address the House for 1 minute.)

Mr. GINGRICH. Mr. Speaker, I have asked for this time to proceed for the purpose of receiving the schedule from the distinguished majority leader.

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Missouri.

Mr. GEPHARDT. Mr. Speaker, the business of the House is finished for the day. There will be no more votes today. The House will not have votes on tomorrow.

On Monday, we will have the Columbus Day break, and there will not be votes.

On Tuesday, October 15, the House will meet at noon and consider two suspensions:

H.R. 1297, Clean Vessel Act of 1991; and

H.R. 2105, to designate the "Myrtle Foster Whitmire National Wildlife Refuge."

The votes on those suspensions will be postponed until after the consideration of both suspensions. Then we will move on to H.R. 3371, the Omnibus Crime Control Act of 1991, subject to a rule.

On Wednesday, October 16, and the balance of the week, we will complete consideration of the crime bill.

We will consider H.R. 2950, the Intermodal Surface Transportation Infrastructure Act of 1991, subject to a rule;

H.R. 2521, motion to go to conference on Department of Defense appropriations for fiscal year 1992;

H.R. 2508, the foreign assistance authorization for fiscal years 1992 and 1993 conference report, 1 hour of debate; and

H.R. 2369, Flint Hills Prairie Monument, under an open rule, with 1 hour of debate.

Obviously, other conference reports may come up at any time, and any further programming will be announced later.

Mr. GINGRICH. Mr. Speaker, if I might, let me mention a couple of things.

I understand there will be votes on Tuesday. One Member on our side has indicated that if we are going to have votes on Tuesday, Members should expect a vote on the Journal. That is not

a leadership decision, but I just want to tell the Members there is a real possibility that we may have a vote after going in on Tuesday, so we might have a vote, I believe, at noon on Tuesday.

Second, has the majority decided, are we likely to be in on Friday? What should the Members begin to think about in terms of next week?

□ 1500

Mr. GEPHARDT. Mr. Speaker, the plan at this time is to be in on Friday to try to complete the highway bill.

Mr. GINGRICH. Mr. Speaker, let me ask the gentleman about a couple of other things. We are very concerned on our side about getting a rule on the crime bill which will make in order five very major amendments which the President has indicated are vital if he is not going to veto the bill. Does the gentleman have any information yet on what the rule is likely to look like?

Mr. GEPHARDT. The Committee on Rules is meeting now, and there will be consultation with the other side as we move to try to put the rule together.

Mr. GINGRICH. Mr. Speaker, two other topics: it is my understanding the President may veto the unemployment bill as early as tomorrow. Does the gentleman know, if the other body were to sustain his veto on Wednesday of next week, could the calendar possibly be accommodated to bring up something like the Dole-Michel bill or some other version of a signable unemployment bill next week so that we could get that out of the way and try to get help to the unemployed?

Mr. GEPHARDT. Mr. Speaker, I do not know the answer to that yet. I would say that I guess I am still thinking that the other body might override that veto. We will have to make that decision at that time, if that happens, and we will let the gentleman know as soon as we can.

Mr. GINGRICH. Mr. Speaker, lastly, and I appreciate the majority leader informing us, there was some talk at one point that we might have the so-called October surprise resolution brought up at some point next week. Does that seem not to be on the calendar yet?

Mr. GEPHARDT. Mr. Speaker, there is no plan here to have that on. However, we will be meeting with the minority, I think, on that question in the near future.

ADJOURNMENT TO TUESDAY, OCTOBER 15, 1991

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that when the House adjourns on Friday, October 11, 1991, it adjourn to meet at noon on Tuesday, October 15, 1991.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from Missouri? There was no objection.

DISPENSING WITH CALENDAR
WEDNESDAY BUSINESS ON
WEDNESDAY NEXT

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday Rule be dispensed with on Wednesday next.

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

There was no objection.

GENERAL LEAVE

Mrs. COLLINS of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include therein extraneous material, on the subject of the special order today by the gentleman from Mississippi [Mr. MONTGOMERY].

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

There was no objection.

NEARLY \$400 MILLION A YEAR IN
PROFITS TO A DRUG COMPANY
FROM MEDICARE: INTRODUCTION
OF A GROSS WINDFALL PROFITS
TAX ON ORPHAN DRUG PRO-
DUCTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. STARK] is recognized for 5 minutes.

Mr. STARK. Mr. Speaker, Medicare and the taxpayers of America will provide the Amgen Corp. with nearly \$400 million in what is basically pure profit during the next 12 months.

Amgen has a monopoly on the sale of EPO to kidney disease patients who are on dialysis, thanks to the Orphan Drug Act. The monopoly will expire June 1996. Between now and then, Amgen will receive about \$1.8 billion in sales to Medicare. The cost of researching and developing the drug was \$170 million—according to the company. It received that much from Medicare in the first 8 months that the drug was sold to Medicare patients—starting in the summer of 1989. The cost of production of the drug is minimal. Court records reveal that it costs about 40 cents to make 1,000 units of the drug. Medicare is paying \$11 a thousand units—a mark up of 2,750 percent. Selling and administrative costs should be minimal. Everyone who has kidney failure knows about the disease; 80 percent of all end-stage renal disease patients are getting the drug. Ads are not needed. A recent news report quoted an officer of Amgen as complaining about the economy's lower interest rates: The \$300 million in cash they had to invest—thanks to taxpayers—was not getting as good a rate of return as it did when interest rates were higher. The company's stock is the darling of Wall Street. One corporate officer recently exercised stock options for \$18 million in personal profit.

In short, Mr. Speaker, enough is enough. The company is established and healthy and

has major new drugs being developed for the market.

The taxpayers need a better price on EPO. To keep buying EPO at this price is the equivalent of the Air Force buying more \$600 toilet seats.

It is time to enact a windfall profits tax on those who have a monopoly and who make excessive profits from sales of an essential drug to Government agencies.

Therefore, I am today introducing a new version of my Orphan Drug Windfall Profits Tax Act. This bill would allow a company like Amgen to recover all R&D costs plus an annual profit of 25 percent. We do not have the hard data, but a good estimate is that the company will have a 51 percent internal rate of return for the period through 1996. That is simply too much for a monopolist to impose on sick people.

THE ANNIVERSARY OF THE
FOUNDING OF REPUBLIC OF CHINA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. HORTON] is recognized for 5 minutes.

Mr. HORTON. Mr. Speaker, today marks the 80th anniversary of the birth of the Republic of China. As today's Taiwan continues to race along the road of reform, originally laid by late President Chiang Ching-Kuo and now widened and maintained by President Lee Teng-Hui, I want to take this opportunity to commend the leadership and the people of Taiwan on the enormous strides that they have made.

I would also like to bring to my colleagues' attention the National Gallery of Art's newest exhibition entitled "Circa 1492: Art in the Age of Exploration," which opens this Saturday October 12.

The Republic of Taiwan has contributed 17 bowls and paintings from the National Palace Museum near Taipei, which houses 640,000 of the world's finest Chinese art works and cultural relics, for this exciting show. These historic Chinese paintings and bowls are from the Ming Dynasty of the late 15th and early 16th centuries.

Recently, I had the opportunity to attend a dinner given by the Taiwanese Representative to the United States, Mr. Mou-Shih Ding, and his wife in honor of J. Carter Brown, the Director of the National Gallery of Art and Mr. Chin Hsiao-yi, the Director of the National Palace Museum. At this gala event, Representative Ding delivered a spirited and dynamic speech, which I would now like to insert into the RECORD:

REMARKS BY REPRESENTATIVE MOU-SHIH DING
Dr. and Mrs. Chin, Dr. and Mrs. Brown, Congressman and Mrs. Horton, Chairman and Mrs. Bellocchi, Mr. David Dean, Ladies and Gentlemen:

It is a great pleasure for me and my wife to host this dinner tonight. First of all, I would like to welcome Dr. Hsiao-yi Chin, Director of the National Palace Museum, who for many years has dedicated himself to safeguarding and adding glory to the national treasures of Chinese cultural legacy. I would also like to mention that tomorrow will be Dr. Brown's birthday. An internationally recognized authority on fine arts, Dr. Brown

is personally familiar with the National Palace Museum. Thirty years ago when a specially selected collection of Chinese art treasures arrived in Washington, D.C. on a one-year five-city tour exhibition, he was Assistant to the Director of the National Gallery of Art, which he has headed since 1969.

And we also welcome Congressman and Mrs. Horton who met Dr. Chin when they last visited Taipei, Chairman Bellocchi of AIT and Mrs. Bellocchi, and another good friend of ours Mr. David Dean, Resident Advisor to CCK Foundation for International Scholarly Exchange.

You might all know that the National Gallery of Art is presenting "Circa 1492: Art in the Age of Exploration," which will be opened on October 12. The exhibition is described as the most wide-ranging display in the National Gallery's fifty-year history. More than 600 objects of art provided by famous museums all over the world will be put on exhibit. I sincerely believe that this exhibition will bring a better understanding of the visual arts at the dawn of the modern era, which are also treasures of human civilization.

The National Palace Museum of the Republic of China is proud to provide seventeen finest examples of late fifteenth and early sixteenth century Ming Dynasty art objects to participate in this exhibition. In its history there have been only two times that selected items from the vast collection of the world-renowned National Palace Museum, Taipei have been sent for overseas exhibition: the first overseas exhibition was in the United Kingdom in 1935-36; the second was in the United States in 1961-62. Now this will be the first time in thirty years that the Chinese art treasures from the Republic of China once again are on public exhibit in the United States. I hope, in the future, representative Chinese art treasures from Taipei could be exhibited overseas at more frequent intervals.

The Chinese items on display at the National Gallery of Art beginning the coming weekend offer a rare opportunity for the American public to catch a glimpse of life in China as Europe embarked in the Age of Discovery. For by the middle of the 15th century the Ming dynasty had ushered in a period of extraordinary peace and prosperity which served to nourish the unleashing of creative energies. Art lovers from all walks of life will not want to miss the opportunity of viewing the seventeen selected masterpieces from the National Palace Museum.

On Thursday Chinese all over the world will be celebrating the 80th anniversary of the founding of the Republic of China. Will you join me in a multiple toast: to the bright future of Asia's first republic, to a tremendous success of "Circa 1492," to welcome Dr. and Mrs. Chin to Washington, and to wish Dr. Brown many happy returns.

Thank you.

WILLIAM MELENDEZ—WINNER OF
THE RALPH ATKINSON CIVIL
LIBERTIES AWARD FOR 1991

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. PANETTA] is recognized for 5 minutes.

Mr. PANETTA. Mr. Speaker, on October 27, 1991, the American Civil Liberties Union will present Bill Melendez with the Ralph Atkinson Civil Liberties Award for 1991, and I rise today in honor of his remarkable contributions to our society.

Bill Melendez was born of Puerto Rican parents in Spanish Harlem, New York City. He succeeded in overcoming the problem of English, as a second language, and was able to work his way through the public school system. With the help of a scholarship from the Hebrew Technical Institute, he went on to earn a degree and teaching certificate from New York University.

Bill taught high school in New York for 16 years and received his masters degree in school administration. During this period, he was elected president of the Classroom Teacher's Association where he led the battle to receive equal pay for teachers.

Since moving to Monterey County, CA, in the early 1970's, Bill Melendez has been a leader in the movement for equal rights. As the director of migrant education, he worked as an effective advocate of bilingual and bicultural education, the advancement of educational opportunities for Chicano children, and for gender equality.

As the local president of the League of United Latin American Citizens [LULAC], Bill Melendez addressed civil liberties and human rights issues affecting all aspects of the 16th Congressional District. His success and determination led to his appointment as the California State president of LULAC where he continued to confront these significant and critical issues on a much larger scale.

He is a founder and cochair of the Coalition of Minority Organizations [COMO] which has effectively addressed issues of discriminatory housing and employment, police brutality, and racially motivated violence. As a member of the Affirmative Action Advisory Committee for Monterey Peninsula College, Bill Melendez has contributed to significant advances in employment of women and minority teachers and classified employees.

Bill has excelled as a prominent leader and organizer throughout his career, continually assisting others in overcoming obstacles to liberty and equality. He is not only an excellent leader, but also a good friend who has continually worked with my office to assist others.

Mr. Speaker, it is with great pleasure that I ask my colleagues to join me now in congratulating Bill Melendez on his receiving the Ralph Atkinson Civil Liberties Award for 1991 from the American Civil Liberties Union. His successful efforts toward the advancement of civil rights, and his notable record as a teacher and a leader are of immeasurable benefit to the people of our society. I am honored to have this opportunity to recognize Bill Melendez, a man who has clearly and unselfishly devoted his life to the bettering of our society.

REQUIRED READING ABOUT KEIRETSU FOR ALL AMERICANS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mrs. BENTLEY] is recognized for 60 minutes.

Mrs. BENTLEY. Mr. Speaker, last weekend I read the two part article by Paul Blustein on the Japanese keiretsu system which ran in the Washington Post. Entitled "Japan's Corporate Connections Create Challenge for U.S.

Business," it spells out in detail exactly how the Japanese operate. It should be required reading for every American businessman, governmental official and citizen.

Anyone who reads these two articles should immediately realize there is no such thing as free trade, and certainly not fair trade with the Japanese. They play by their rules which benefit only Japan and a privileged group of businessmen. We must understand how our friendly adversaries operate, because an economic war is a deadly game.

Any number of American businesses can attest to the power of a keiretsu in doing business with the Japanese. The plight of my friend Boone Pickens in trying to obtain a seat on Koito's board of directors made all the newspapers. Also well known is Go-Video's fight with Japan, Inc., in building a double deck VCR. A large international company in my district, Allied Signal, was stalled for 11 to 14 years by Japan's refusal to allow the filming of patents for Metglas. All three of the above have battled a keiretsu.

In fact, ask in your community or one of your acquaintances and there will probably be a story of a company having difficulty with a Japanese keiretsu. Just what does this mean for America to be competitive? It means the deck is stacked against the United States by the coalition of the Japanese Government working tightly with business. In writing about international strategies for business, Robert Orr, Jr. stated that "70 percent of Japanese global trade is conducted with Japanese firms at each end of the transaction, far more than 20 percent of American companies." In other words they are doing business with themselves.

There is a vast difference on how the Japanese and American companies do business.

Mr. Blustein pointed out in his article that "the stock of a typical Japanese company is held by scores of allied firms, creating a vast web of interlocking ownership. Moreover, Japanese manufacturers maintain extraordinarily close ties with their suppliers and distributors."

The article pointed out the difference that Japanese companies are "non-capitalistic in the mutual shareholding pacts that Japanese companies maintain with fellow keiretsu members and other corporate allies. Because of these pacts, companies are totally controlled by management and their business partners; investors—the capitalists—are powerless."

American firms with which we are familiar are, according to Mr. Blustein, "ultimately single entities with their own board of directors and stock that is held mainly by the investing public—individual investors, mutual funds, and pension funds."

We also can recognize the difference between the Japanese keiretsu and

American system by the accessibility of the stockholders to the company.

Boone Pickens can attest to the difference. He acquired over 25 percent of Koito's stock and was denied a seat on the board of directors. Mr. Pickens felt he was discriminated against as a foreigner.

In fact, what set Boone Pickens' Texas ire off and sent him to the press was the remark yelled at him by a Koito board member, "Remember Pearl Harbor." With that remark Boone Pickens was ready to do battle and warn Americans on what to expect in doing business with the Japanese.

Remember Pearl Harbor, indeed. Why should the Japanese be taunting Boone Pickens with that remark unless they are again attacking us, only with an economic war?

The Pickens story also points up what Mr. Blustein stated in his article that "a typical company's board consists entirely of its top executives and representatives or two from a fellow keiretsu company." No outsiders need apply.

If we followed that system in America then the thousands of independent dedicated Americans like the Anne Armstrongs, Henry Kissingers, Donald Rumsfelds, or others could not serve on a board unless they were part of a keiretsu.

Business would be done as it is in Japan—primarily for the corporate officeholders and the wealthy international trading companies with their member companies. The Washington Post articles quoted an American educated top official of Japan's finance ministry that "Japan is so different from the United States that it shouldn't be deemed 'capitalistic' even though it is a market economy based on competition."

The official explained, "What makes Japan 'noncapitalistic' is the mutual shareholding pacts that Japanese companies maintain with fellow keiretsu members and other corporate allies. Because of these pacts, companies are totally controlled by management and their business partners; investors—the capitalists—are powerless."

I repeat, the "capitalists are powerless."

That is an amazing statement since Gen. Douglas MacArthur supposedly broke up the old zaibatsus of World War II. How could this happen?

Mr. Blustein reported that "at the end of the war," nearly 70 percent of Japanese stock ended up in the hands of individuals, and the threat of takeovers by individuals was very real. He reported that companies "began accumulating each other's shares, in some cases by swapping in cashless transactions."

Remember this process was helped along by the Korean war, when America needed a supply and staging area for the war. At that time American of-

ficials conveniently looked the other way at what the companies were doing. In fact, the Korean war actually gave Japanese companies a much needed economic jump start.

And this jump start was sparked again by the Vietnam war when we bowed to pressure from none other than Japanese interests to buy our vehicles for the military directly from Japan, thus saving time and shopping costs. This really provided the boost their auto industry needed. Ironic, isn't it?

Now today, we are dealing with those earlier policy changes which favored the building of the keiretsus and with the relaxing of Japanese monetary policies in the 1980's.

William Sterling wrote about the Japanese economy in "The Leveraging of Japan" that "what I learned sheds light on the important role Japanese real estate speculation has played in financing U.S. fiscal deficits." He explained how real estate investment in Japan enabled it to become the single largest capital market and creditor nation in the world. He stated, "Japan's annual long-term capital outflow averaged \$133 billion in 1985-1988, while its current account surplus average only \$84 billion. These funds were used as long-term investments in Treasury bonds and companies in the U.S."

From 1985 to 1987 Japan's land and equity doubled. Values increased by 887 trillion yen—an amount equal to 257 percent of Japan's 1987 gross national product.

During the 1980's Japanese companies took advantage of low-cost funds and the results were more asset transactions. The net result was a money machine for the Japanese to buy assets in America such as Rockefeller Center, Columbia Pictures, the Jefferson Hotel, and assets in other countries, too.

These events of leveraging the assets of Japan have made the Japanese keiretsu a formidable economic opponent for American businesses.

Daniel Burstein writing about the contest among the capitalists in the "Battle of the Capitalists" stated, "the battle will be intense and visible day by day. The stakes will include national and regional living standards, the success or failure of major corporations, access to the fruits of new technological developments, the quality of environment and insulation from security risks both old and new. Life and death for large numbers of people may not be inherent in this battle, but the quality of life and even the extent of human freedom are closely bound up with it."

It is true that freedom and economics are linked together. Many economists are government policymakers and are quick to tell us how good Japanese, American companies will do well.

If this is so, then why is Prof. Robert Reich of Harvard and others stating

that by the year 2000 only 20 percent of the population will have a good income and the other 80 percent which are blue and pink collar workers will have a tough time? In fact, Professor Reich stated that even the meaning of American would be redefined.

Again, I urge that Americans read Paul Blustein's articles on the keiretsu. We need to understand what we are fighting and act accordingly. We must ensure that the Nation's children and grandchildren have every opportunity that this great nation offers. We must be able to say that on our watch we passed on a greater heritage to the youth of this Nation. If we don't, it will be our shame.

JAPAN'S CORPORATE CONNECTIONS CREATE CHALLENGE FOR U.S. BUSINESSES

(By Paul Blustein)

TOKYO.—Now that Soviet communism has crumbled and American-style capitalism looms triumphant, let us turn to Page 654 of "The Japan Company Handbook."

On that page can be found a glimpse into a system that is proving a more formidable challenger to the U.S. economic model than communism ever did.

Listed there are the major shareholders of NEC Corp., one of Japan's premier high-tech companies and the world's largest maker of computer chips. And what is striking is how similar most of their names are. Among the shareholders are Sumitomo Life Insurance Co., Sumitomo Trust & Banking Co., Sumitomo Bank Ltd., Sumitomo Marine & Fire Insurance Co. and Sumitomo Electric Industries Ltd., themselves all giant companies.

The family resemblance is no coincidence. NEC and the Sumitomo companies belong to what the Japanese call a keiretsu. The word, meaning corporate group, defines the unique organization of Japan's economy.

The keiretsu system links already powerful companies, banks and insurance firms into even more powerful groups that can dominate markets in good times, drive out competition in bad times, and provide protection from the kind of hostile takeovers and stockholder demands for quick profits that plague many American industries.

A small but colorful example of keiretsu cooperation; Go into a bar full of salarymen—white-collar workers—from a Sumitomo keiretsu company, and the beer they'll be drinking almost surely will be Asahi, brewed by a Sumitomo-affiliated company. Go into a bar full of Mitsubishi keiretsu salarymen, and the beer will be that of the Mitsubishi group brewer, Kirin.

Although most Americans have barely heard of it, the keiretsu system represents probably the single most potent threat to U.S. firms in the global battle for sales, profits and jobs. The extensive and stable alliances that Japanese companies form with each other enable them to adopt long-term strategies of market conquest that their American competitors can't afford to match.

The keiretsu system also is one of the most important obstacles to foreign companies trying to penetrate the Japanese market—at least in the opinion of the U.S. government.

Arguing that keiretsu members collude against outsiders, Washington is pressuring a reluctant Tokyo to ferret out and crack down on such practices.

Whatever the outcome of that dispute, the keiretsu issue is crucial to understanding

the Japan Inc. of the 1990s and the future course of U.S.-Japan economic rivalry.

In the view of a growing number of experts on both sides of the Pacific, the network of long-term links among Japanese companies is emerging as the key to what sets Japan's economic system fundamentally apart from that of the United States.

Many of the other features that characterized the Japan Inc. of the past are diminishing in significance. Tokyo's tariffs, quotas and other legal barriers to imports and other legal barriers to imports have been sharply reduced. Even the legendary Ministry of International Trade and Industry has lost much of its power to steer the nation's industrial development, because Japanese companies have grown too big and rich to be influenced much by the ministry's subsidies and research programs.

"Keiretsu is the bedrock of the way Japan competes internationally," said J. Michael Farren, the U.S. undersecretary of commerce for international trade. "A lot of the other [U.S. vs. Japan] issues have been corrected; we've cut through the mush. Now we're down to bedrock."

NEW ERA OF COMPETITION

The difference between Japanese economic bedrock and U.S. economic bedrock is looming especially large these days. As communism fades from the world scene, a new era of competition is dawning between disparate models of private enterprise.

Ultimately at stake, according to Kenichi Imai, a professor at Tokyo's Hitotsubashi University, is "a struggle for leadership in shaping the economic systems of the century to come."

This struggle will undoubtedly involve the systems of many countries besides the United States and Japan—an obvious example being Germany, which has its own distinctive corporate structure that lies somewhere between the other two. The struggle also will revolve around issues such as how much government should intervene in the economy and how much power workers should have over their jobs.

But nowhere does the struggle seem more sharply defined—or momentous—than between the keiretsu-dominated structure of Japan and the every-company-for-itself mode that prevails in the United States.

Not that the prevalence of keiretsu means that competition between companies is absent in Japan. On the contrary, some of the fiercest rivalries anywhere in the world can be found between companies like the Sumitomo group's NEC; Mitsubishi Electric Corp., a Mitsubishi group member; and Toshiba Corp. of the Mitsui group.

Nor are keiretsu rigid, isolated clubs that deal exclusively with fellow members. Members of one commonly do business with members of others. Indeed, Keiretsu dividing lines are sometimes hard to distinguish because of mixed allegiances. Today's groups are much more loose and flexible than their pre-World War II ancestors, called zaibatsu, which were centrally controlled by powerful holding companies and were mostly closed to dealing with outsiders.

But keiretsu-style connections pervade Japanese industry, and they are based on practices alien to most U.S. companies. The stock of a typical Japanese company is held by scores of allied firms, creating a vast web of interlocking ownership. Moreover, Japanese manufacturers maintain extraordinarily close ties with their suppliers and distributors.

Nothing comparable exists in the United States. Giant conglomerates such as Philip

Morris Companies Inc. or Minnesota Mining and Manufacturing Co. (3M), which own scores of subsidiaries in a variety of different businesses, might appear similar to the keiretsu, but they are not even close.

U.S. companies such as these are ultimately single entities with their own boards of directors and stock that is held mainly by the investing public—individual investors, mutual funds, pension funds and the like.

They fall far short of matching in size or scope a keiretsu like the Mitsubishi group, which includes Japan's largest heavy-equipment maker, fifth-largest bank, largest chemical company, biggest auto and property insurer, third-largest electric machinery maker, fifth largest trading company, biggest beer brewer, fifth-largest automaker, second-largest camera maker, and biggest glassmaker—and in a broad sense, thousands of those companies' distributors and suppliers as well.

Even Japanese officials, who are normally loath to highlight disparities between the Japanese and U.S. systems, see Keiretsu practices as creating major new economic fault lines in the post-Cold War world.

"The real choice now seems to be not between 'capitalism and socialism,'" wrote Eisuke Sakakibara, a top official of Japan's Finance Ministry, in a book published last year.

Sakakibara, who holds a PhD in economics from the University of Michigan, made a startling admission: Japan, he wrote, is so different from the United States that it shouldn't be deemed "capitalistic," even though it is a "market economy" based on competition.

What makes Japan "noncapitalistic," he said, is the mutual shareholding pacts that Japanese companies maintain with fellow keiretsu members and other corporate allies. Because of these pacts, companies are totally controlled by management and their business partners; investors—the capitalists—are powerless.

Whatever the terminology, the ramifications are far-reaching. Particularly, strong evidence suggests that the keiretsu system provides Japanese industry with an incalculable competitive edge. It also is a much less open system than America's, one in which insiders flourish and newcomers—notably foreigners—find gaining access to be exceptionally difficult.

"Which system is 'better,' I don't know," Sakakibara said in an interview. "but I personally like the Japanese system."

THE JAPANESE EDGE

Would your company ever sell its holdings of NEC stock?

The question elicited a pained sigh from Tatsuki Matsui, spokesman for Sumitomo Trust & Banking. After pondering the question for a while, Matsui arrived at his conclusion: "inconceivable."

Sumitomo Trust is a "stable shareholder" of NEC, as are most other Sumitomo group companies and some additional firms from other keiretsu. From 60 percent to 70 percent of the stock in publicly traded Japanese companies is held by stable shareholders.

Most of them would no sooner sell their stable holdings than you would sell your grandmother's diamond engagement ring. For the most part, stable shareholders have stoically held on even during the Tokyo stock market's dramatic drop of 1990-91.

Stable share holding, the cornerstone of the keiretsu system, is no mere cultural curiosity. It is a practice that gives Japanese companies "a tremendous advantage" over their competitors, said Robert Zielinski, a

Tokyo-based financial analyst with Jardine Fleming Securities who this year coauthored a book on the subject.

With the bulk of their companies' shares in friendly hands, Japanese executives can forget about pressures to keep stock market investors happy. Unlike U.S. managers, they don't have to worry about producing constantly rising earnings and higher dividends.

The result is that a Japanese company "can sacrifice its profits by lowering prices to gain market share," Zielinski said. "It can endure years of losses if necessary to drive a competitor out of business. It can spend heavily on new machinery because it doesn't have to spend the money on dividends."

In the United States, companies enjoy no such mutual support and protection against pressure from investors. And while American shareholders may wield little clout as individuals, managements have learned that it is unwise to ignore the shareholders' collective power, especially since the advent of the takeover boom.

U.S. corporate executives often find themselves at the mercy of capricious investors who are inclined to dump the stocks of companies that report disappointing quarterly profits. Companies whose stocks are cheapened often then become the target of a hostile takeover. Many experts believe that as a result of this unsettling financial environment, American managers tend to shy away from long-term strategies that might hurt short-term profitability and cause their company's stock price to fall.

But in Japan, such problems rarely distract management from pursuing an ever-bigger slice of the market, which helps account for the fact that Japanese companies are often admired for their long-term visions and yet reviled for being "predatory." The explanation is less sociological, Zielinski said, than it is "an inherent part of the Japanese system."

SHAREHOLDER INTERESTS

The system does not rate shareholder rights highly, as Texas oilman T. Boone Pickens discovered when he made his highly publicized—and unsuccessful—effort to gain control over Koito Manufacturing Co., an auto-parts maker belonging to the Toyota Motor Corp. keiretsu.

Despite acquiring more than a quarter of Koito's shares in 1989, Pickens wasn't allowed a single seat on the company's board of directors. He complained he was being discriminated against as a foreigner.

But in Japan, it's almost unheard of for an outsider to become a director—even an "independent" person representing shareholder interests much less a corporate raider. A typical company's board consists entirely of its top executives and a representative or two from a fellow keiretsu company.

Most Japanese executives are unapologetic, saying their system does a better job than the United States of balancing the rights of investors, managers, workers, communities and the nation.

"We don't have to worry about hostile takeovers, and we don't have to worry about short-term profits," said Susumu Kitazawa, a senior manager in NEC's corporate planning department. "I think this system is truly beneficial."

Few experts, if any, would go so far as to suggest that the stable share-holding system deserves primary credit for Japan's postwar economic miracle. Too many other factors have played important roles.

One element that has made a major contribution is the willingness of Japanese con-

sumers to save a high percentage of their money, which has helped provide industry with an ample pool of funds for building factories and machinery. Another factor is Japanese employees' group-oriented work ethic, which is ideally suited to high-quality manufacturing.

Another is the Ministry of International Trade and Industry's policy of nurturing key industries, which many scholars consider to have been particularly effective during the 1960s and 1970s. Still another is the government's emphasis on fostering a stable, low-inflation economic environment that helps boost business confidence.

But few experts, if any, doubt that Japanese companies behave just as Zielinski says they do.

In surveys, Japanese managers tend to put increasing market share at the top of their list of priorities. Several notches down they usually put earning maximum profits or boosting their company's stock price. U.S. managers tend to do the opposite.

More importantly, Japanese managers put their money where their priorities are.

They spend staggering amounts of the shareholders' money on research, plants and equipment—about \$700 billion last year, a sum greater than the U.S. figure despite the fact that Japan's economy is only three-fifths as large. This year, even though interest rates have risen and the stock market is depressed, Japanese firms are continuing to plow considerably more money into long-term capital spending than are U.S. firms.

In their pursuit of market share, they are willing to endure relatively low profitability. From 1984 to 1989, the earnings of Japanese companies were a slender 2.48 percent of total assets, well under half the rate for American firms.

Out of this lower pot of profits, they pay shareholders a relatively miserly portion—the average figure is about 30 percent—in dividends. U.S. companies pay about half of their profits in dividends.

LONG-TERM ATTACHMENTS

All of this might suggest that stable shareholders care nothing about earning a return on their investments. The fact is that they do care, but these particular investments offer something besides dividends and capital gains.

In many cases, these investments serve as symbols of long-term attachments. They are investments by suppliers in their customers' stock, by banks in their borrowers' stock and by companies seeking to maintain myriad other sorts of alliances.

Sumitomo Life Insurance, for example, is both NEC's largest shareholder and the only insurance company whose sales representatives manage to gain access to NEC's offices for the purpose of peddling insurance policies to NEC employees.

Sumitomo Bank is NEC's "main bank." This means that NEC, as one of its most important customers, can count on the bank both to take the lead in providing loans to bankroll the company's growth and stand ready to organize a bailout should business go sour.

Unlike the United States, where companies like Pan American World Airways Inc., Eastern Air Lines and Southland Corp. (owner of the 7-Eleven convenience store chain) have undergone spectacular bankruptcies, a main bank will avoid at almost all costs the blow to its prestige that would result from a major client going under.

During the late 1970s, when NEC made a giant competitive leap by investing hundreds of millions of dollars in semiconductor

plants, Sumitomo Bank, along with two other Sumitomo lenders, provided one-third of the loans.

Moreover, NEC knew it could depend on the bank to come to the rescue should its strategy encounter problems; Sumitomo had saved Mazda Motor Corp. from bankruptcy after the 1973 oil crisis by installing a new management team and providing financing for the development of a new engine for Mazda cars.

"The terms on which we borrow from Sumitomo are the same as the terms provided by other financial institutions, but I think the existence of the main bank provides strong support in a mental sense," said NEC's Kitazawa. "We don't have to worry about a shortage of funds to finance a long-term strategy' even if we get into difficulty,

we know our main bank will provide assistance without fail."

Stable shareholders hang on to their shares through thick and thin for reasons other than customer relations, however. A company that behaved in such an un-Japanese way as to sell off massive amounts of its stable holdings would become murahachibu—an outcast from Japan's corporate club.

"The others would sell its shares. There's an implicit contract," said Yoshitaka Kurosawa, a professor at Nihon University in Tokyo.

Much is at stake, after all, in the stable share-holding system. It arose in the years after World War II almost entirely for one reason: Japanese companies wanted to protect themselves against being taken over.

At the end of the war, the U.S. military occupation ordered the zaibatsu disbanded for

their role in powering the Japanese military machine. Nearly 70 percent of Japanese corporate stock ended up in the hands of individuals, and the threat of takeover suddenly loomed for companies that had never had to contemplate such a fate.

So companies began accumulating each others' shares, in some cases by swapping stock in cashless transactions. They went on a final binge of buying in the early 1970s, because the government was opening the economy to greater investment from abroad, raising the scary prospect of foreign takeovers.

By the time foreign companies were legally allowed to buy Japanese firms, virtually all of the targets of opportunity had become safely ensconced in the cocoon of stable share holding.

THE SIX MAJOR KEIRETSU

Industry	Mitsui	Mitsubishi	Sumitomo	Fuyo	Sanwa	Dai-ichi
Commercial Banking	Mitsui bank	Mitsubishi bank	Sumitomo bank	Fuji bank	Sanwa bank	Dai-ichi Kangyo bank
Life insurance	Mitsui Mutual Life Insurance	Meiji Mutual Life Insurance	Sumitomo Life Insurance	Yasuda Mutual Life Insurance	Nippon Life Insurance	Asahi Mutual Life Insurance, Fukoku Mutual Life Insurance
Trading	Mitsui	Mitsubishi	Sumitomo	Marubeni	Nissho Iwai, Nichimen, Iwatani International	C. Itoh, Nissho Iwai, Kanematsu-Gosho, Kawasho Shimizu
Construction	Mitsui construction, Sanki engineering.	Mitsubishi construction	Sumitomo construction	Taisei	Ohbayashi, Zenitaka, Toyo construction, Sekisui House.	
Food and beverages	Nippon flour mills	Kirin Brewery		Nissin flour milling, Sapporo Breweries, Nichirei.	Itoham foods suntory	
Textiles	Toray industries	Mitsubishi rayon		Nishinbo industries, Toho rayon	Unitika Teijin	Asahi chemical industry
Glass and cement	Onoda cement	Asahi glass, Mitsubishi Mining and Cement.	Nippon Sheet Glass, Sumitomo Cement.	Nihon cement	Oaska Cement	Chichibu cement
Steel	Japan steel works	Mitsubishi steel manufacturing	Sumitomo Metal Industries	NSK	Kobe Steel, Nisshin Steel, Nakayama Steel Works, Hitachi Metals.	Kawasaki steel, Kobe steel, Japan metals and chemicals
Electric machinery	Toshiba	Mitsubishi electric	NEC	Hitachi Oki Electric Industry, Yokogawa Electric.	Hitachi, Iwatsu electric, Sharp, Kyocera, Nitto Denko.	Hitachi, Fuji Electric, Yaskawa electric manufacturing, Fujitsu, Nippon Columbia
Transportation equipment	Mitsui engineering and shipbuilding, Toyota motor.	Mitsubishi heavy industries, Mitsubishi motors.		Nissan motor	Hitachi Zosen, Shin Meiwa Industry, Daihatsu.	Kawasaki heavy industries, Ishikawajima-Harima heavy industries, Isuzu motors
Precision instruments		Nikon		Canon	Hoya	Asahi optical
Department Stores	Mitsukoshi				Takashimaya	Seibu department store

Note.—Other major industries include trust banking, nonlife insurance, forestry, coal mining, pulp and paper, chemicals, petroleum, rubber, nonferrous metals, nonelectric machinery, transportation, communications and services.
Source: Toyo Keizai, Kigo Keiretsu Soran, 1990.

[From the Washington Post]
INSIDE JAPAN INC.: COZY TIES FOSTER
POLITICAL FRICTION
(By Paul Blustein)

TOKYO.—Yoshiyuki Oguro, a soft-spoken 52-year-old with graying hair and slim build, is a foot soldier in the system that underpins Japan's competitive mastery.

Oguro is a director at one of the 200 companies belonging to the Nissan Motor Co. keiretsu, or corporate group. For 30 years, he worked at Nissan, but in 1989, in a move common among keiretsu companies, the giant automaker sent him to work at Kasai Kogyo Ltd., a Tokyo-based maker of sun visors and other products used in car interiors. Nissan owns about a quarter of Kasai Kogyo's stock and buys slightly more than 60 percent of its products.

People like Oguro are the human glue that bind keiretsu members together in a corporate structure that sharply distinguishes Japan's economy from America's. Cementing inter-company links is a vital part of corporate life in Japan because the keiretsu system is the foundation of Japanese industry—and a principal source of its economic might.

Unlike American companies, which tend to form limited ties to other companies, most major Japanese firms maintain long-lasting connections with scores of other companies. These powerful groups provide their members with mutual support and protection, better equipping them to overwhelm foreign competition in global battles for market supremacy.

In the aftermath of communism's collapse, as differences between free-market economies are coming into clearer focus, the keiretsu system is emerging as a potent alternative to U.S.-style capitalism. But the system raises questions about fairness and openness.

Consider what would happen if, for instance, an American company tried to beat Kasai Kogyo at getting Nissan's business. Could it?

"It would be difficult, I think," Oguro said. He cited the fact that Nissan, after many years of dealing with Kasai Kogyo, has gained complete faith in the quality of the company's products.

But to critics of the Japanese system, the reliability of products like Oguro's sun visors explains only part of the reason that foreign companies encounter frustrations selling to companies such as Nissan. The intimate ties between suppliers and customers lie at the root of what the critics see as a grossly insular and cozy market.

How reasonable a chance do outsiders have, critics ask, when most important companies have fortified their connections with practices like exchanging executives?

U.S. trade negotiators are leading the charge and in doing so they are going well beyond earlier U.S.-Japan trade battles, which focused on the sort of complaint lodged previously against governmental regulations such as tariffs and quotas.

Now they are mounting a diplomatic attack on the very fabric of Japan's corporate society, something the Japanese government

might not be able to fundamentally change even if it wanted to. Nevertheless, in Washington's view, Tokyo must loosen keiretsu ties because, the argument goes, the system is operating as a potent, invisible barrier to foreign goods.

"Where it really matters is in the procurement offices of Japanese corporations, where there is a propensity to buy from only a couple of suppliers, frequently from within the group," said Joseph Massey, assistant U.S. special trade representative for Japan and China. "These kinds of exclusive supplier relations are a significant problem for competitive companies outside the network, both American and Japanese."

U.S. officials acknowledge that the keiretsu system affords Japanese industry some clear advantages. Japanese managers can make an all-out effort in seeking to capture markets with high-quality, low-priced goods because, as keiretsu members, they don't have to worry about earning high profits to satisfy investors.

The majority of their companies' stock is held by "stable shareholders"—friendly companies that care about maintaining business alliances rather than making a killing on their investments.

But a more competitive system is one thing, U.S. officials say. A system that unfairly restricts the flow of imports is another.

Japanese officials argue just as vigorously that the U.S. complaints are largely unjustified. Keiretsu, they say, are genuinely open

to foreign companies—TRW Inc., the Cleveland-based diversified auto-parts company, is an oft-cited example—that make the effort to develop the relationships and gain the confidence of customers.

In any case, they said, some U.S. companies are just as difficult for outsiders to sell to. General Motors Corp., for example, decades ago bought many auto-parts companies and now gets about 70 percent of its components from in-house suppliers. Toyota Motor Corp. makes about 27 percent of its parts in-house. "Which system is more closed?" asked a Toyota spokesman.

There is, however, little doubt that gaining entry into the charmed keiretsu circles is an exceptionally daunting task. The practice of swapping executives like Oguro is just one of the ways in which those inside maintain their mutual connections.

Many keiretsu stage regular meetings of member company presidents. The presidents of the 30 or so major Mitsubishi group companies, for example, are known as the Kinyokai, or Friday Club, because they gather for lunch on the second Friday of each month.

By all accounts, the discussion at these meetings often revolves around social and political topics, and when the subject turns to business, members are careful to steer away from anything that might smack of the hatching of a conspiracy.

But the meetings underscore how group harmony is promoted at all corporate levels and in all sorts of places, from restaurants to bars to golf courses.

Some keiretsu publish group magazines and newsletters such as Sumitomo Quarterly and the Mitsubishi Monitor. Mitsubishi even maintains a matchmaking organization to help men from one group company meet women from another. It's called the Diamond Family Club and in 20 years has produced 1,600 marriages.

'EXCLUSIONARY EFFECTS'

Even the harshest critics of keiretsu do not claim that presidents' lunches or dating clubs make a major difference in corporate purchasing decisions.

But these practices, augmented as they are by mutual share holding and exchanges of personnel, reflect the emphasis that the Japanese place on *anshinkan*, a word that means "peace of mind" or "feeling of confidence."

In group-oriented Japan, it is especially important to have *anshinkan* concerning the people and companies you are doing business with. The trouble is, this clubbiness has a dark side.

Peter Young, director of international business at Guardian Industries Corp., a Michigan glassmaker, recounts the story of a meeting he held in Tokyo in May to deliver a sales pitch to the purchasing manager of a major Japanese company.

"We've got a problem," the apologetic purchasing manager said, according to Young. Guardian's glass is highly competitive, the man said, but if he were to buy from Guardian, his current Japanese glass supplier would be incensed—and the ramifications could be serious. "The company we currently buy glass from would tell its keiretsu sister company to stop selling us" a crucial raw material. Young quotes the purchasing manager as saying, So, no sale.

There is no evidence suggesting that Young's experience is a common one. Robert Z. Lawrence, an economist at the John F. Kennedy School of Public Affairs at Harvard University, found in a recent study that in industries dominated by companies with the

tightest keiretsu affiliations, imports tend to be abnormally low.

The study doesn't constitute hard proof of anti-import discrimination by keiretsu, but "it is consistent with the position that there are exclusionary effects," Lawrence said.

Many Japanese officials, executives and academics contend that foreign critics such as Lawrence misunderstands how keiretsu functions.

The critics, they say, fail to grasp two vital points:

Closeness between suppliers and customers boosts efficiency. "Have you read 'The Machine That Changed the World.?' " is a question often asked of foreigners these days by Japanese officials and industrialists.

The book, published last year and asked on a 5-year Massachusetts Institute of Technology study, lionizes the keiretsu supplier system as a vital part of the "lean production" method that has enabled Toyota, Nissan and other Japanese automakers to overwhelm their U.S. and European competitors.

As the book points out, Japanese automakers and their keiretsu suppliers feel that they have a major stake in each other's success. So in buying steering wheels for a new car model, for instance, Japanese auto manufacturers don't simply hand a group of competing suppliers a design and place an order with the lowest bidder, as their U.S. competitors are want to do.

Rather, the auto companies expect their keiretsu suppliers to help design the steering wheels and constantly improve them; the price is subject to frequent negotiation based on both companies' intimate knowledge of the other's needs and problems.

"We don't just say, 'Reduce costs 5 percent,'" said Koichiro Noguchi, a Toyota purchasing executive, "We work together with them to identify wasteful parts of the production process."

According to the MIT study's authors, the system works considerably better than the Western model because "suppliers don't have to constantly look over their shoulders" for fear of being dropped for a lower bidder.

"Instead, they can get on with the job of improving their own operations with the knowledge that they will be fairly rewarded for doing so," the study said.

Keiretsu are highly varied and loosely organized. "It is very complex even to decide which company belongs to which group," said Ruytaro Komiya, an economics professor who is currently director general of the Ministry of International Trade and Industry Research Institute. "For instance, the newspapers say Sony belongs to the Mitsui group. But Sony people don't think so."

The keiretsu issue, Komiya concluded, is "essentially a bogey."

Keiretsu lines sometimes are blurry. Kasai Kogyo, for example, sells not only to Nissan but to an affiliate of Honda Motor Co. as well. Mitsubishi companies hold chunks of Mitsui and Sumitomo company shares, and vice versa.

Hitachi Ltd., the giant electronics company, is a member of three different keiretsu the Fuyo, Sanwa and Dai-Ichi Kangyo groups. Still other companies have such divided loyalties that they are deemed independent; an example is Nippon Steel Corp., the world's largest steelmaker.

But the complexities shouldn't obscure the main issue—which is that stable, group-oriented links "are pervasive in Japanese industrial organization," and that their impact is profound, said Michael Gerlach, a professor at the University of California at Berkeley.

Gerlach's research shows that while some companies such as Sony Corp. and Nippon

Steel are less firmly attached than others are to a major keiretsu, virtually all large Japanese firms maintain essentially the same sort of relationships with groups of stable shareholders, closely-knit suppliers and customers, and a "main bank" that stands ready to provide emergency financial help if necessary.

What is more, these links "are part of a larger family of relationships," Gerlach said. In Japan's electronics industry, for example, a company's main bank is usually the main bank of its biggest suppliers as well.

Plain common sense suggests that foreign criticism of these links are not entirely misplaced, the Nihon Keizai Shimbun, Japan's leading financial daily, editorialized recently.

Keiretsu may enhance Japanese companies' productivity, the newspaper said, "But such relationships have obviously hampered free and fair competition among firms here."

WHICH SYSTEM WILL CHANGE?

One evening last May, a jet-lagged Charles H. Dallara sank back in a chair shortly after arriving in Tokyo for trade talks and reflected on the problems he was encountering as lead U.S. negotiator on the keiretsu issue.

U.S. officials were making progress with the Japanese on a number of other contentious trade disputes, but very little on keiretsu, said Dallara, who has since left the position of assistant secretary of the treasury for international affairs.

"An issue so fundamental to the structure of the Japanese economy," he said wearily, "is something that their government just finds very difficult to deal with."

U.S. negotiators are always voicing frustration about the problems of getting Japan to change its ways, but the keiretsu issue may prove to be in a class by itself.

Part of the problem is that Washington itself can't figure out how to alter such an ingrained system.

The United States is urging Japan to strengthen its notoriously lax antitrust enforcement on the grounds that keiretsu companies allegedly work together to keep competitors out.

Washington also wants Tokyo to change various rules to boost the power of individual stockholders, who have virtually no clout under Japan's stable share-holding system.

But even if Tokyo were inclined to yield on every point—which it is not—the measures proposed by Washington would result in only modest change in the influence of keiretsu.

In the meantime, some of Japan's toughest critics are questioning whether the keiretsu system requires a more drastic response. Their theory is that Japanese companies are effectively playing under such different rules, and responding to such different cues from the market, that they should somehow be restricted from freely playing on U.S. turf.

A sign of this hardening view came recently from Rep. Richard A. Gephardt (D-Mo.) who, when he introduced a new trade bill aimed at penalizing Tokyo, said: "In my view, the keiretsu system lies at the heart of the incompatibility" between the Japanese and U.S. economies.

But others say it is unfair to single out Japan on this score, because some other countries, especially in Europe, have systems with keiretsu-like features. Germany, for example, has a main-bank tradition in which banks own stock in their borrowers, and companies establish loose alliances with other borrowers from the same bank group.

"We really have two economies that are at two extremes of what is perhaps a contin-

uum," said UC Berkeley's Gerlach. "Japan is at one end. But the U.S. may be at the other extreme, along with other Anglo-Saxon countries including the U.K. that have a strong history of antitrust enforcement, a strong notion that stockholder rights are important and a belief that long-term business relationships are bad if they're anti-competitive." Germany, Italy and France fall somewhere in the middle, he said.

How a country positions itself involves some tough trade-offs. The keiretsu system "is likely more efficient, more productive over the long term," Gerlach said. "On the other hand, as long as the system remains one in which insiders have the advantage, there's going to be a perception that it's a system in which everyone doesn't have equal access."

LEARNING FROM EACH OTHER

So which system will "win?"

In the struggle to shape the economic systems of the next century, will Japanese-style efficiency prevail at the expense of American-style openness? Or vice versa?

Japanese officials are acutely aware that their nation depends for its prosperity on maintaining good relations with its trading partners, and they recognize that the biggest of those trading partners—the United States—will insist that Japan move at least part of the way toward the Anglo-Saxon model.

Eisuke Sakakibara, a senior official of Japan's Finance Ministry, said that the United States should not try to force fundamental changes in the way Japanese business works. But, he acknowledged: "The system has some characteristics of a club society, and it has to open up."

Already Japanese auto and electronics companies are trying to bring more foreign companies into their keiretsu supplier networks, although their requirements for quality and delivery are stringent.

In one recent example, Nissan announced that the Japanese subsidiaries of Texas Instruments Inc. and Garrett Turbo Inc. would join its 200-company network of primary suppliers. Three other foreign-owned firms had been admitted earlier.

But the United States, too, may undergo some substantial changes in its industrial structure as a result of the relentless, withering competition U.S. companies are encountering from Japan.

A number of U.S. companies, impressed with what they have seen of the keiretsu system, are emulating some of its aspects.

"I think a lot of American companies are going to move in the direction of having a close relationship between customer and supplier," said William Franklin, who heads the Japanese operations of Weyerhaeuser Co., the giant lumber and paper company.

Weyerhaeuser is one of the small but growing band of foreign firms that have been able to penetrate some of the keiretsu. The company has grown to admire how its keiretsu partners "don't flop around depending on what the price is today," Franklin said.

As a result, he added, Weyerhaeuser's U.S. operations have been "moving very definitely" in the direction of more stable bonds with suppliers and customers.

"I think it's much more likely that we [Americans] will become more that way," Franklin said, "than that they will become less that way."

□ 1510

NOBEL COMMITTEE SHOULD CONSIDER AWARD TO AUNG SAN SUU KYI

The SPEAKER pro tempore (Mr. LANCASTER). Under a previous order of the House, the gentleman from California [Mr. ROHRBACHER] is recognized for 5 minutes.

Mr. ROHRBACHER. Mr. Speaker, I yield 30 seconds to the gentleman from California [Mr. DORNAN].

Mr. DORNAN of California. Mr. Speaker, I thank the gentleman for yielding to me. I know his special order is on Burma, and I know he is one of the recent House Members that has been there.

I was there about 7, 8 years ago with the gentleman from Illinois, Congressman HYDE, and just as a prologue to his special order, where I hope people will pay close attention, I read a very thoughtful piece on Burma recently describing it as a Fascist Disneyland, kind of a provocative title.

Since Disneyland is in my district, let me say how tragic it is that to get people's attention we have to use the word Fascist, not Communist, when in fact it is a Communist Disneyland. That is a bad enough juxtaposition of beauty with tragedy.

The reason they say Disneyland is because it is such picturesque, beautiful land. I was there with the gentleman from Illinois [Mr. HYDE], up in the Shan Province. We visited the Swedagon Palace, one of the most beautiful Buddhist temples in the world.

□ 1520

The people are gentle, polite. But in Myanmar, the new name, it is truly an ugly, Communist police state. So I look forward to hearing the gentleman's thoughts on the once lovely land of Burma.

Mr. ROHRBACHER. I thank the gentleman from California. And also I would note that the students and those people in the democratic reform movement in Burma know full well that they are for free enterprise and against socialism. During the time when they struggled for freedom openly, the sense that they portrayed and the demands that they were making were for free enterprise, and they were talking about rejecting the totalitarian socialism under which they had suffered.

Mr. Speaker, today the reason I am addressing the House is to suggest something about the Nobel Peace Prize. The Nobel Peace Prize is an honor confirmed on those who exemplify courage and commitment to the principles that we believe in, individuals who have demonstrated heroism and uplifted humanity by their very presence among us.

There could be no better candidate for this year's Nobel Peace Prize than

Aung San Suu Kyi. She is a heroic Burmese woman who is being held captive by the brutal dictatorship in Burma. She has been imprisoned there for 2 years. She is the acknowledged leader of her people, the spiritual as well as the political leader, because her spirit is on the side of democracy.

During this time that she has been held for these last 2 years her people have been brutalized and terrorized. Outrageous killings have been taking place. These gentle people have been raped, they have been beheaded, they have been terrorized by their very own Government. Her political party, the party of Aung San Suu Kyi, and the reformers overwhelmingly won an election 2 years ago. The ruling clique simply canceled the election, canceled the outcome of the election.

Aung San Suu Kyi should be given the Nobel Peace Prize, but first of all she should be released from captivity, and she should be recognized by this Government as the legitimate leader, the legitimate President of Burma. She inspires us by her heroic action, and she has been inspiring the Burmese people as well.

Mr. Speaker, America should move to isolate the pariah regime in Rangoon. We need economic, political and most of all an arms boycott, an arms embargo from all civilized nations against this dastardly regime that is committing such atrocities on their own people. At this time this brutal regime not only is killing their people, but is destroying the rainforests of their own country, and they are destroying the legacy of their people in order to sell it to Western interests to buy more weapons which are used not to defend their country but to brutalize and destroy and kill their own people.

Burma is not in the news today, unfortunately. But there are 40 million souls who should know that they are not forgotten, they are not written off by the West.

As democracy is sweeping the world, Burma is not going to be left out, and as democracy is sweeping the world, the Nobel Prize committee should select no greater heroine of democracy than an individual who represents the best of the human soul and a commitment to democracy and freedom under such trying circumstances, Aung San Suu Kyi. Decency and progress, democracy, these are the things that she has been struggling for against a regime which was one of the most brutal and Fascist and terroristic, and yes, socialist and communistic regimes of all time.

These people continue to murder their own citizens. We must as decent people stand together wherever people are being terrorized. I do not care if it is in Croatia, I do not care if it is in China, I do not care if it is in Cuba, I do not care if it is a regime that is friendly to the United States of Amer-

ica. Our country should always stand for freedom. Our country should be the voice of freedom and democracy and hope for all those people who are oppressed.

Now that the cold war is coming to a conclusion, we must state this again and again so that the world will know that we were not just anticommunist, but instead we did have a commitment of the soul to all those who linger under tyranny, all those who long for a better life under freedom.

No better message could be sent to the people of the world than to have our country recognize Aung San Suu Kyi and the Nobel Prize committee select her for this year's Nobel Prize.

VACATION OF SPECIAL ORDER AND REQUEST FOR SPECIAL ORDER

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that I may be permitted to vacate my 60-minute special order request for today, and in lieu thereof I ask unanimous consent that I may proceed for 5 minutes.

The SPEAKER pro tempore (Mr. LANCASTER). Is there objection to the request of the gentleman from Texas?

There was no objection.

ESCROW ACCOUNT REFORM ACT OF 1991

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 5 minutes.

Mr. GONZALEZ. Mr. Speaker, today I am introducing a bill to eliminate the excess money that homeowners across the country are required to pay into escrow accounts and to address homeowner frustrations caused by escrow practices.

The Real Estate Settlement Procedures Act [RESPA] was enacted in 1974 and amended in 1975 and again in 1983 to protect consumers from unnecessarily high settlement charges. Since that time, the attorneys general of several States have painstakingly documented substantial violations of RESPA in the mortgage industry. It is time for Congress to breathe new life into RESPA so that consumers are not forced to pay billions of dollars unnecessarily into escrow.

According to a recent report of seven State attorneys general, two-thirds of all homeowners are required to pay more into their escrow accounts than the law permits. The average excess amounts fall in the range of \$170 per borrower. In testimony before the housing subcommittee, the attorneys general called upon the Federal Government to enact a rule defining servicer responsibilities and prohibiting servicers from keeping more than a 2-month cushion. I am introducing for the RECORD a copy of their report enti-

tled "Overcharging on Mortgages: Violations of Escrow Account Limits by the Mortgage Lending Industry."

Faced with these disturbing findings of widespread overcharging, the Department of Housing and Urban Development [HUD] is investigating escrow practices in the mortgage servicing industry. Without some enforcement of RESPA, it is clear that millions of homeowners will continue to pay billions of dollars in excessive escrow payments.

This bill will fill current regulatory gaps and stem the barrage of consumer complaints that come to the housing subcommittee's attention. I will not go into detail about the legislation at this point; however, I do want to highlight some important provisions in the bill.

First, this legislation requires that the amount of money in the account must always fall at some point during the year to an amount equal to two months of escrow payments.

Second, the legislation requires the servicer to pay the borrower interest for the use of his or her money. This requirement adopts the recommendation made at our hearings and should provide a disincentive for overcharging borrowers.

Third, the legislation enables the homeborrower to pay his escrow expenses directly assuming that certain equity requirements and other financial requirements are met. The current escrow account requirements do not allow a borrower to assume responsibility for escrow expenses upon request. Under this bill, the borrower's request to pay escrow charges will require that the loan-to-value ratio is no more than 80 percent and that the borrower has agreed to make timely payments of all taxes, assessments, and premiums.

Fourth, the legislation clarifies that the borrower and HUD have the power to enforce escrow rights in court.

Finally, the bill directs HUD to study the feasibility of standardizing escrow procedures.

Once again, reform is needed to reduce "the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance." It is intolerable that Federal law is ignored to the disadvantage of millions of American homeowners. This legislation will strengthen RESPA and provide HUD with the powers to enforce it.

I now place the bill in the RECORD as well as a section by section analysis thereof, and a copy of the letter from the attorney general of New York to Secretary Jack Kemp.

H.R. 3542

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 "Escrow Account Reform Act of 1991".

SEC. 2. LIMITATION OF PAYMENTS INTO ESCROW ACCOUNTS.

(a) PAYMENTS AT SETTLEMENT.—

(1) IN GENERAL.—Section 10(a)(1) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(a)(1)) is amended by striking "plus one-sixth" and all that follows through "twelve-month period".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect upon the expiration of the 180-day period beginning on the date of the enactment of this Act.

(b) REGULAR MONTHLY PAYMENTS.—

(1) IN GENERAL.—Section 10(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(a)) is amended by adding at the end the following new undesignated paragraphs:

"Notwithstanding paragraphs (1) and (2) and any mortgage agreement, each lender or servicer maintaining any such escrow account shall provide that, not less than once during each annual escrow period, the balance in each such escrow account shall equal an amount not greater than the amount equal to one-sixth of the sum of the total amount of taxes, insurance premiums, and other charges anticipated to be paid during such annual escrow period (or such lesser amount as provided in the mortgage agreement or other mortgage instrument).

"For 12 consecutive calendar months (the first such month being the month in which the first installment payment under the mortgage is due), an amount in each such month not exceeding 1/72 of the estimated total amount of taxes, insurance premiums, and other charges which are reasonably anticipated to be paid on dates during the annual escrow period may be collected by the lender as a sum in excess of the amount sufficient to pay such taxes, insurance premiums, and other charges during the annual period."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to any annual escrow period (as such term is defined in section 10(h) of the Real Estate Settlement Procedures Act of 1974, as amended by this Act) for a federally related mortgage loan that begins after the expiration of the 180-day period beginning on date of the enactment of this Act.

(c) COVERAGE OF SERVICERS.—Section 10(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(a)) is amended—

(1) in the matter preceding paragraph (1), by inserting "or servicer (as the term is defined in section 6(i))" after "lender"; and

(2) by inserting "or servicer" after "lender" each place it appears in paragraphs (1) and (2).

SEC. 3. INTEREST ON AMOUNTS IN ESCROW ACCOUNTS.

(a) IN GENERAL.—Section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) is amended by adding at the end the following new subsection:

"(e) INTEREST ON AMOUNTS IN ESCROW ACCOUNTS.—Any lender or servicer that established or maintains an escrow account in connection with a federally related mortgage loan shall pay interest on the balance in the escrow account at an annual rate of not less than 5.25 percent. Interest accrued under this subsection shall be payable annually, except that any amounts accrued upon termination of an escrow account shall be payable upon the termination of the account. The Secretary shall, by regulation, provide for the manner and timing of payment of interest accrued under this section to the borrower or the account of the borrower."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any escrow account (in connection with a federally

related mortgage loan) that is maintained or established after the expiration of the 180-day period beginning on the date of the enactment of this Act.

SEC. 4. OPTION OF BORROWER TO TERMINATE ESCROW ACCOUNT.

(a) IN GENERAL.—Section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

“(f) BORROWER ASSUMPTION OF ESCROW ACCOUNT RESPONSIBILITY.—Any borrower in connection with a federally related mortgage loan for which less than 80 percent of the original principal obligation under the loan remains outstanding may terminate any escrow account for the loan by submitting to the lender or servicer of the loan a statement certifying that the borrower agrees to make timely payments of all taxes, insurance premiums, and other charges paid from the escrow account. Notwithstanding subsection (a) or any mortgage agreement, a lender or servicer may not require the establishment or maintenance of any escrow account for any federally related mortgage loan for which the escrow account is terminated under this subsection.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect upon the expiration of the 180-day period beginning on the date of the enactment of this Act.

SEC. 5. ENFORCEMENT OF BORROWER RIGHTS.

(a) CIVIL MONEY PENALTIES.—Section 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(d)) is amended—

(1) in paragraph (1)—
(A) by striking “failure to submit a statement to a borrower as required under subsection (c)” and inserting “failure by a lender or servicer to comply with the provisions of this section”; and
(B) by striking “failing to submit the statement” and inserting “failing to comply”; and

(2) in paragraph (2), by striking “the requirement to submit the statement” and inserting “a provision of this section”.

(b) ACTIONS.—Section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), as amended by sections 3 and 4 of this Act, is further amended by adding at the end the following new subsection:

“(g) ACTIONS TO ENFORCE BORROWER RIGHTS.—

“(1) DAMAGES AND COSTS.—Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

“(A) INDIVIDUALS.—In the case of any action by an individual, an amount equal to the sum of—

“(i) any actual or incidental damages to the borrower as a result of the failure; and

“(ii) in the case of a pattern or practice of noncompliance with the provisions of this section, any punitive damages as the court may allow, in an amount not to exceed \$10,000.

“(B) CLASS ACTIONS.—In the case of a class action, an amount equal to the sum of—

“(i) any actual or incidental damages to each of the borrowers in the class as a result of the failure; and

“(ii) in the case of a pattern or practice of noncompliance with the provisions of this section, any punitive damages as the court may allow.

“(2) ATTORNEYS FEES.—In any action pursuant to this section, the court shall award to the prevailing party the court costs of the action together with reasonable attorneys fees.”

SEC. 6. DEFINITIONS.

Section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609), as amended by sections 3, 4, and 5 of this Act, is further amended by adding at the end the following new subsection:

“(h) DEFINITIONS.—For purposes of this section:

“(1) The term ‘annual escrow period’ means a period of 12 consecutive calendar months occurring during the term of a federally related mortgage loan. The annual escrow period beginning in each calendar year shall begin with the calendar month during which the first installment payment under the mortgage was due.

“(2) The term ‘balance’, with respect to any escrow account, means the total of any amounts remaining in the escrow account, irrespective of the purpose or manner in which such amounts were deposited or are to be used.”

SEC. 7. JURISDICTION OF COURTS.

Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended—

(1) by inserting “(a) KICKBACK AND TITLE COMPANY VIOLATIONS.—” after “SEC. 16.”; and

(2) by adding at the end the following new subsection:

“(b) ESCROW ACCOUNT VIOLATIONS.—Any action brought pursuant to the provisions of section 10 may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located or where the violation is alleged to have occurred, within 3 years from the date that the borrower under the federally related mortgage loan first had actual knowledge of the violation. Actions pursuant to section 10 may be brought by the borrower, the Secretary, the Attorney General of any State, or the insurance commissioner of any State.”

SEC. 8. STUDY OF STANDARD ESCROW ACCOUNT MANAGEMENT PROCEDURES.

(a) IN GENERAL.—The Secretary of Housing and Urban Development shall conduct of study of the accrual and disbursement dates for taxes, insurance premiums, and other charges under escrow accounts maintained by lenders and servicers in connection with federally related mortgage loans, procedures regarding shortages and surplus amounts in such escrow accounts, and the impact and treatment of inflation with respect to such accounts, to determine the feasibility of requiring standards procedures for managing such escrow accounts.

(b) DEFINITIONS.—For purposes of this section—

(1) the term “accrual date” means, with respect to taxes, insurance premiums, and other charges to escrow accounts, the date on which the amount for a charge is required to be deposited in an escrow account maintained for payment of such charges; and

(2) the term “disbursement date” means, with respect to taxes, insurance premiums, and other charges to escrow accounts, the date on which the amount of a charge is withdrawn from an escrow account maintained for payment of such charges.

(c) REPORT.—The Secretary of Housing and Urban Development shall submit to the Congress a report regarding the results of the study under subsection (a), not later than June 30, 1992. The report shall include the following information:

(1) A determination of the overall cost to lenders and services of converting accounting procedures used for escrow accounts from single item analysis to an aggregate analysis procedure.

(2) A determination of the feasibility of establishing an accrual date for each charge to an escrow account that occurs 30 days before the disbursement date for the charge.

(3) A determination of (A) the feasibility of identifying the disbursement dates for various State and local tax collection agencies throughout the United States and (B) any cost to the Secretary of Housing and Urban Development of issuing a list of such disbursement dates on an annual basis.

(4) A description and comparison of various accounting methods for estimating the annual percentage increase in property taxes for a property securing a federally related mortgage loan.

(5) An examination of mortgage agreements and a determination of the extent to which such agreements permit any increase in the amounts required to be deposited by a borrower upon transfer of the servicing rights for the mortgage loan.

(6) A determination of the extent and frequency of deficiencies of amounts in escrow accounts and a description and comparison of the various procedures used to remedy such deficiencies.

(7) A description of the various procedures used by State and local tax authorities and lenders and servicers in increasing tax charges and collecting related amounts for escrow accounts.

(8) A recommendation regarding the feasibility of requiring standard procedures for management of escrow accounts.

(9) Any other information relating to the study conducted under subsection (a) that the Secretary considers appropriate.

SEC. 9. REGULATIONS.

Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall issue any proposed regulations necessary to carry out this Act and the amendments made by this Act. Not later than the expiration of the 60-day period beginning on the expiration of such 90-day period, the Secretary of Housing and Urban Development shall issue final regulations to carry out this Act and the amendments made by this Act. The regulations issued pursuant to this section shall be subject to section 553 of title 5, United States Code.

SECTION-BY-SECTION ANALYSIS OF H.R. 3542, ESCROW ACCOUNT REFORM ACT OF 1991

Sec. 1. Short title.—The short title of the Act is the Escrow Account Reform Act of 1991 (the Act).

Sec. 2. Limitation of payments into escrow accounts.—Deletes the provision allowing the lender to collect a one-sixth cushion of the estimated total escrow charges during the coming year at settlement. Permits the collection of this one-sixth cushion on a prorated basis over the first year of regular installment payments.

Requires the lender or servicer to ensure that the escrow balance will fall to an amount not greater than one-sixth of the sum of the total amount of taxes, insurance premiums and other charges anticipated to be paid during the annual escrow period (or such lesser amount as provided in the mortgage agreement or other mortgage instrument) at least once during the annual escrow period.

Provides for an effective date of 180 days after enactment of the Act for this section and all other sections of this Act.

Sec. 3. Interest on amounts in escrow accounts.—Requires any lender or servicer to pay 5.25 percent annual interest to borrowers in connection with escrow accounts. Provides that this interest shall be payable an-

nually or, in the event of termination, upon termination of the account.

Sec. 4. Option of borrower to terminate escrow account.—Provides that a borrower shall have the right to terminate any escrow account arrangement and the ability to self-pay escrow charges assuming that less than 80 percent of the original loan principal is outstanding.

Sec. 5. Enforcement of borrower rights.—Provides for actual and punitive damages in the case of actions to enforce borrower rights under Section 10 of RESPA.

Sec. 6. Definitions.—Defines "annual escrow period" as 12 consecutive calendar months beginning with the first due installment payment under the mortgage.

Defines "balance" as the total of any amounts remaining in the escrow account.

Sec. 7. Jurisdiction of courts.—Provides that actions for escrow violations may be brought in the U.S. District Court within three years from the date that the borrower under the federally related mortgage loan first had actual knowledge of the violation. Provides that actions may be brought by the borrower, the Secretary, the Attorney General of any state, or the insurance commissioner of any State.

Sec. 8. Study of standard escrow account management procedures.—Requires the Secretary to study the accrual and disbursement dates for taxes, insurance premiums, and other charges; procedures regarding shortages and surplus amounts in such escrow accounts; and the treatment of inflation for purposes of determining the feasibility of requiring standard procedures in escrow account administration. Provides that the report shall be submitted to congress no later than June 30, 1992.

Sec. 9. Regulations.—Requires the Secretary to issue proposed regulations within 90 days of enactment of the Act and to issue final regulations within 150 days of enactment of this Act.

APPENDIX V

STATE OF NEW YORK,
DEPARTMENT OF LAW,

New York, NY, September 19, 1989.

Hon. JACK F. KEMP,
Secretary, Department of Housing & Urban Development, Washington, DC.

DEAR SECRETARY KEMP: We write to urge you to act decisively and swiftly to correct a serious problem that harms millions of homeowners in our states and throughout the nation. The problem is the widespread practice among mortgage lenders of compelling consumers to pay substantially more money into home mortgage escrow accounts than is permitted under the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. 2609. The corrective action needed is HUD adoption of a regulation, proposed to your office over a year ago, to make unequivocally explicit the escrow limitations under RESPA.

As you know, most mortgage contracts permit lenders to require each of their mortgagors to fund a mortgage escrow account to ensure payment of annual taxes and hazard insurance on the mortgaged property. In 1974, Congress enacted RESPA, in part to prohibit the practice of forcing homeowners to fund mortgage escrow accounts in amounts far in excess of what was actually necessary to pay tax and insurance payments when due. As originally enacted, RESPA limited this compulsory escrow account funding to the amount necessary to make tax and insurance payments when due, plus an additional "cushion" of no more

than one-twelfth of the total amount of such payments. In 1975, after lenders complained that this did not provide adequate protection, Congress amended RESPA to raise the permissible cushion to one-sixth of the total annual tax and insurance payments.

Remarkably, during the course of an investigation into the escrow practices of several of the largest mortgage lenders in the country, we discovered that RESPA limitations have been largely ignored by the mortgage industry since 1975. More specifically, more of the mortgage industry uses creative accounting procedures which in many cases results in an escrow account cushion that is 50% to 100% higher than the permissible limit under RESPA. Moreover, despite the fact that RESPA merely sets a ceiling on any contractually authorized escrow account funding, many lenders have cited RESPA as authority for compelling a mortgagor to fund an escrow account up to the ceiling amount even where the mortgage contract does not authorize an escrow account or where the contract explicitly sets a lower ceiling.

As a result of these widespread practices, American homeowners collectively have been compelled to deposit several billion dollars of extra money into their escrow accounts, in violation of RESPA and the intent of Congress. In most cases, these accounts pay no interest to consumers. In those few states where interest is required to be paid on these accounts, it is almost always at submarket rates.

In formal comments to proposed regulations under section 10 of RESPA last year (copy enclosed), we urged your office to promulgate a regulation expressly reaffirming that the federal statutory limit on escrow accounts cannot be violated regardless of the creative accounting procedure used by mortgage lenders to circumvent that limit. While our proposal apparently was favorably received by your staff, an announcement in the Federal Register of a proposed regulation on the escrow account issue appeared to be near at hand in March, further progress on this issue now seems to be stalled. Because of the wide impact of the proposed regulation—literally millions of homeowners would receive refunds or credits rightfully due them—strong, swift action on our proposal could be an important step in building public confidence that the Department, under your leadership, will revitalize its resolve to protect the public interest.

We would be available to meet with you to more fully discuss this matter.

Sincerely,

Robert Abrams, Attorney General of the State of New York; John Van de Kamp, Attorney General of the State of California; Robert A. Butterworth, Attorney General of the State of Florida; Thomas J. Miller, Attorney General of the State of Iowa; James M. Shannon, Attorney General of the Commonwealth of Massachusetts; Hubert H. Humphrey III, Attorney General of the State of Minnesota; Jim Mattox, Attorney General of the State of Texas.

□ 1530

THE STIFLING OF DEBATE

THE SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 60 minutes.

Mr. DORNAN of California. Mr. Speaker, it would only be an important

matter that would bring me to the floor on a day of adjournment and keep our good House staff and the official recorders of debate a few more moments, but I am prompted to come to the floor today for a special order on one of the most contentious and divisive issues of our time, the issue of abortion and the right to life, versus what is described as the right to privacy.

The United States is going through a turmoil because people at Planned Parenthood and other proabortion organizations had thought that after the Roe versus Wade decision this issue had entered the social realm of quick divorce, easy pornography, easy sex for single people, and that we would not have been debating this again, and yet a conspiracy of silence has grown across the country that has developed such frustration that people of all ages and all religious faiths up to and including clergy of our three great religions in this country have taken to the streets, and in the manner of the Reverend Martin Luther King and other civil-disobedience demonstrators, going back to John Brown in that turbulent period before the Civil War, that War Between the States, are actually deliberately breaking misdemeanor statutes, and in some very rare cases, and it stopped, have even taken to the destruction of property with great endangerment to life, although, thank God, no one has ever died because of some misguided bomber, and some of those people are still languishing in jail, and I think they probably feel deservedly so, because they put it on the line.

But as far as the civil demonstrations going, the rough summer in Wichita, KS, being the example where people demonstrated in front of two abortuaries, there is a conspiracy of silence by the dominant media culture, dominated by liberal philosophy, mass media, where they did not tell the full story, that Dr. George Tiller ran two abortion clinics that specialized in 4-, 5-, 6-month abortions, 7-, 8-, 9-month abortions, what the Supreme Court brethren termed in January 1973, as the second and third trimester, and that Dr. Tiller had complaints because these abortuaries were in domestic neighborhoods, of ashes from burned human flesh, the flesh of fetuses, descending on homes and backyards, on porches, furniture, on roofs, on automobiles, and as far as I know, that still goes on.

Why would people in this country with the greatest legislature, the most open, free debate in the U.S. Senate and the U.S. House of Representatives, with more mass media outlets than any person, any citizen of any country from the Golden Age of Pericles to the age, the so-called Age of Reason in Europe two centuries ago, to the world's fair that I went to as a 7-year-old in 1940 and saw television for the first time, who would have believed we would have 1,750-plus newspapers, 7,000

to 8,000 radio and television outlets in this country? An unbelievable advancement in television with cable television where 80 to 100, 100-plus channels are available on the dial, who would believe that people would feel stifled in their discussion of a key issue such as when does life begin?

Well, as a prolifer, I can tell you that there has been a strangling of debate. Let me give you two ghastly examples of a double standard in this country.

In San Francisco, that beautiful city by the bay named after the gentle saint of Assisi, the patron saint of animal lovers, two young men held up scientific medical pictures of aborted fetuses, and they were arrested under pornography laws.

The dead homosexual artist photographer, Robert Mapplethorpe, was able to get into some of the most exclusive museums in this country, albeit sometimes in a separate carpeted, beautifully lit room, to have some of his more graphic homoerotic art displayed, including violating one of his body orifices with the handle of a bullwhip, and that was all defended by self-styled art aficionados, but holding up pictures of aborted fetuses, arrests are made a few weeks ago in San Francisco under pornography laws. Of course, it will be thrown out of court this decade or this year.

And then we have an example in my hometown of record, Garden Grove, where I have been a homeowner for 9 years, in a parade, not disobeying any local statutes or State laws, a non-violent demonstration by proliferers in what they call a life chain, and it was a nationwide exhibit, and in response to this, and in response to Gov. Pete Wilson vetoing a homosexual activists special privilege bill in California, there was a homosexual demonstration, same street, Garden Grove Boulevard, in Garden Grove, CA, and with some counterdemonstrators on the sidewalk, by no means designated as prolife people, just concerned citizens demonstrating peaceably against the homosexual demonstration, some of the homosexuals did what used to be called in this country flashing, an immoral act, particularly if it is on a schoolyard, and the cliché that was made a joke on "Laugh In" years ago in the 1970's was the little man in the raincoat exposing himself on a schoolyard.

Well, some of these homosexual parade marchers turned to the crowd, including 3-, 4-, 5-, 6-year-old children, teenagers and preteens of all ages, dropped their trousers and, I guess the college unfunny term is "moonied the crowd," and then some of the lesbian demonstrators raised their T-shirts, devoid of undergarments and exposed themselves to these children.

What did the commentator on a Los Angeles network owned and operated station say? He said, "Well, these pro-

life or rescue demonstrators across the country had been shocking us for months now with their shocking pictures of fetuses, so maybe it is about time that they got shocked back," and according to my daughter, Robin, those are almost his exact words.

What a travesty to compare showing a medical picture to showing, or to people exposing themselves against local and State law, and it is dismissed as somehow or other moral equivalency.

This issue may take a new turn in the well of this House when I up the ante on this debate on life and bring to this well, which I am planning now, anthropomorphic models used in medical school to train future obstetric and gynecology doctors, nine models of all stages of development of a human being in its mother's womb, from zygote to 9 month fully formed fetus.

□ 1540

I am going to line it up in the well here and then I will have photographs starting out with photographs of a holocaust that stunned me as a young 12-year-old eighth grader when the Second World War ended.

I was in newsreel theaters when the news visually was part of the motion picture, the established motion picture fare at any theater. There was the mandatory cartoon, the short, if not a double feature, and then the news, which anybody who planned on having a public life looked forward to, Movie Tone news from 20th Century Fox, RKO Pathe, and there would be a warning. It is the first time I ever heard a warning in communications in my life. It said, "Some members of the audience and some young people may find the following scenes shocking," and they gave them a warning if they want to leave the theater or retire to the lobby, but these are pictures that we think because of the enormity of the evil deserve to be shown.

I remember vividly, because I had seen it recently on one of the cable channels, either the Discovery Channel or Arts and Entertainment, A&E Channel, pictures of British soldiers on bulldozers pushing human beings, dead human beings, at the camp at Bergenbelsen in northern Germany into huge open graves, human beings like cordwood, men and women of all ages being rolled, their bodies tumbling over one another and tumbling down into these mass open graves where lye was thrown on them to help the decomposition of dust to dust.

I remember being stunned as a 12-year-old, unable to comprehend in the term we now describe as "man's inhumanity to man."

Well, the people who suffered that holocaust say to us never again, and refresh our memories of the utter incomprehensible horror of it by showing those photographs. Some of those folks

have tried to say it is wrong to use the word holocaust in relation to anything else, a tragedy at sea, a massive forest fire and despoiling the environment of Yellowstone was an environmental holocaust.

The first time I ever saw the word holocaust or looked it up in the dictionary was in reference to the Armenian Holocaust in 1915 in Europe and then again in the early 1920's when a genocide took place of a million and a half Armenian people in the eastern part of what is now the State of Turkey.

I am going to show pictures of the holocaust and say it is only proper that these be shown to children at some point in their schooling, and then I am going to take off an A-frame right here that picture of the European Holocaust of the slaughter of not only 6 million of the world's then 14 million Jewish citizens, but I am going to point out, as I put it down, that here is an ongoing holocaust of 4,500 Americans in their mother's wombs because even if a pregnant American mother, prospective mother, goes to Iceland or the moon to have her baby, it still will be an American citizen because the mother is a citizen.

Women from Mexico struggle in their latest month of pregnancy to cross the Rio Grande at its lowest point to work somehow or other onto American soil so that their child born on U.S. soil or territory is an American citizen, no matter what the national heritage of the parents, so that that child will be part of the American dream to vote someday as an American and, yes, to have a privilege that even Alexander Hamilton, one of our forefathers, did not have because he was born on the Caribbean Island of Nevis. He could never, as Henry Kissinger, a former distinguished Secretary of State, cannot be President by constitutional law because they were not born an American citizen; but that little child to a Mexican peasant woman reaching out for the American dream, that child can be President if it is born 1 foot inside the Texas, New Mexico, Arizona, or California border; so these are American citizens we are talking about in their mother's wombs, 4,500 a day.

When I show the photographs that are award-winning photographs from Sweden to Hong Kong to Africa to all over the Western Hemisphere, award-winning photographs, titled "The Miracle of Life," I will show those large photographs on this floor of the second, third, fifth, sixth, and eighth month of pregnancy as I showed the cover of Time magazine 2 weeks ago and got a nice little hit out of a Roll Call reporter named Craig Winneker. Craig titled my 5-minute special order on the cover of Life magazine and pictures inside where Time magazine referred to a 6-month fetus as a baby, he called it "Bobby's Baby Babble."

Well, I am about to give a little bit more of what Craig called "Baby Babble" here in a minute, so stay tuned, Mr. Speaker. I hope Craig will stay tuned. He pointed out how clever it was—

The SPEAKER pro tempore (Mr. LANCASTER). The gentleman will refrain from addressing the television audience.

Mr. DORNAN of California. Yes, Mr. Speaker. As I mentioned to the Chair in my last remarks, this reporter made mention of how clever I was, that I always wove in the Speaker's title, and it is difficult to speak only to the Chair, but I accept those rules of the Chair. It adds a certain decorum around here; but we all know, Mr. Speaker, there are a million and a half people generally watching at this time through the electronic facilities of this House, where we make our debate and our discourse here, Mr. Speaker, available to the Nation.

So that is going to be an interesting debate. I hope I have it ready in time for the conference bill on the National Institutes of Health, because it will be very clear to people for the first time that follow our House, Mr. Speaker, that when you show the zygote in the first month, that is not what doctors are interested in for fetal experimentation or fetal transplant or the second month or the third month, when the fetus is now about this size, even though the heart has been beating since day 18 and brain waves since day 40. What are the fetal experimenters looking for? Large—and they told me at the National Institutes of Health—perfect, they do not want anything from a spontaneous abortion because they never, ever know what caused a miscarriage or spontaneous abortion. They want induced abortions and they want that fetus as large as they can get it. It stands to reason you are going to get more brain tissue, more bone marrow, a larger liver or other intestinal organs out of a 7-, 8-, or 9-month fetus from these people who do the third trimester or second trimester abortions and who are burning some in the crematoria. I can assure you that a lot of that once living human tissue and those human organs are going to some of these experimental labs around this country, where in the name of every disease under the Sun that has to do with old age, we are talking about extending people's lives in a feeble state into their late eighties and nineties at the expense of killing fetuses in this country at the rate of 4,500 a day.

Now, I come across, thanks to one of my daughters, a newsletter for an ecumenical group called Birthright. There are so many pro-life groups across the country, I was aware of the title, but not aware of their charter. Here is exactly what Birthright is: Birthright provides caring, nonjudgmental counseling and emotional support to women

and girls distressed by an unplanned pregnancy. Birthright offers positive alternatives to abortion. As a nonprofit community service organization staffed totally by trained volunteers, Birthright is supported entirely by private donations, unlike Planned Parenthood, which vociferously fights for its taxpayer money to use as fungible funds that they will do the abortions with their privately raised funds, but they want the Federal funds for the counseling that sends the young teenagers to the abortion mill.

Continuing what is Birthright, all services are free, absolutely confidential, and available to any women regardless of age, race, creed, or marital status. Donations to Birthright are tax deductible. Birthright desperately needs your support. Please send your donations to Birthright, Post Office Box 6080119, Mission Viejo, CA—a beautiful part of Orange County. The zip in California is 92691. Please pray for our mothers facing an unwanted pregnancy and for our volunteers who unselfishly give of their time, talent, and love to save these babies.

Then it lists the babies born in the last 4 months, their first names and their size, ranging from 1 at 5 pounds up to 1 jobierre, 11 pounds—wow, an August 29 delivery.

Then they have a little "did you know" column. This stunned me. I have been debating pro-life in this Chamber from this lectern of the leadership desk for 15 years now and I never knew the following facts on doctors, and I find it stunning. This is why you see the frustration of a lot of Fundamentalists groups, Evangelical groups, charismatic groups, Orthodox groups from Orthodox Judaism to the Eastern Orthodox right to the Roman Catholic Church, my faith, this frustration that these kind of facts are not getting out in this wide open country with more information available. I repeat, than any civilization known in the history of the planet Earth.

Listen to this. I am going to give you five "did you knows" about the only medical process, procedure, or policy, as it applies to abortion.

Did you know that abortion is the only medical procedure for which the surgeon is not obliged to inform the patient of possible risks or the exact nature of the procedure, even when questioned directly.

□ 1550

Look at the debate we got with trying to get parents into the loop here; with all the court protections of abusing parents, incestuous parents, and of course we do not want a young girl who is pregnant from some alcoholic relative to have to go to that relative.

So we have all these court protections. But parents who want to share in the ethical, moral, and educational raising of their children, these gifts

from God, they are shut out. But even the young person here is not given the facts.

You are looking at a patient with a successful right hip total replacement. Thanks to Dr. Lawrence Dorr of Kerlan-Jobe Clinic in California. Mr. Speaker, he not only told me every possible thing that could happen to me, including a total failure where they would have to rip it out and try again, but I had to sign away all sorts of things. Not so with abortion.

And that surgery on my hip was April 1.

No. 2, abortion is the only medical procedure that may be advertised. That is so simple a fact. I did not know this.

Now, you open your Yellow Pages, you will see advertisements for abortion. Have you ever seen an ad that says, "Appendectomies done quickly"? Or "Appendectomies done better"? Or "We have 100 percent record, we have never had peritonitis or any infection set in. We have the best appendectomy"? Or "On gall bladder, we are the world's greatest gall bladder operation?" I have not seen any surgery advertised for hip replacement. I have always seen abortion advertised.

That is No. 2.

No. 3, it is the only surgery which the Federal Government cannot regulate. Now, please do not bring up Roe versus Wade, where they say in the second trimester the State has an interest, the hospital or clinic must observe certain standards, health standards followed and in the third trimester the State has a real interest and can actually have legislation demanding this, that, or the other thing.

We have never seen a single law passed in this country in 18 or almost 19 years since Roe versus Wade, which was a lying case—there was not a rape, that is acknowledged, that is a lie, everybody acknowledges that on every side of the issue although it is sotto voce, a whisper on the proabortion side.

They do not want to talk about Norma McCovy, who is traveling the country as a lecturer at this moment on proabortion. She has never had an abortion. All three of her daughters lived. You can read this in the tabloid press because it will not be printed in the dominant press, the dominant media culture, that all three daughters of hers would like to meet her some day but not until she stops going around the country saying that she wished she had been able to kill all three of them, particularly the last one, who turned into the "Roe," a pseudonym for Norma McCovy, the Roe versus Wade baby, with Wade being a Texas district attorney. No, that Roe versus Wade, the lying case, since the day it passed, a very liberal Supreme Court jumping, by their own admission or by Bob Woodward and Bernstein's book "The Brethren," 10 to 15 years

ahead of the country, what I would call ahead of the moral slide and decline that we were on that you see we are on now, that you see being played in the other body during the very week, depending on your point of view.

The Federal Government has legislated not an iota against pornography, but you can see "20/20" shows on ABC or prime time or morning shows or Tom Brokaw's excellent show, "Exposé," or any of Dan Rather's "48 Hours" shows, you could see Prozac being exposed, with pros and cons. On "60 Minutes" regularly on Sunday you see medical shows, one or two every month, but never has there been any investigation except a stunning one on an abortion clinic in Maryland, which was the first on "60 Minutes" a couple of months ago about a Maryland abortion clinic. It was a ripoff where people were doing abortions who were not medically trained people. In spite of this exposé, they did not come back a few months later, which they are certainly entitled to do with any exposé:

Thanks to our white paper, our special reporting, this injustice has been taken care of. These people are out of business. This product is no longer sold. This pharmaceutical drug is now regulated.

No, the abortion mill continues in Maryland, which was the subject of that "60 Minutes" sole exposé in about three great decades of award-winning "60 Minutes" programs.

So I left off at No. 3.

Only medical profession where the surgeon does not tell a patient anything, any of the risks, even when questioned; the only medical procedure that may be advertised; and the only medical surgery which the Government cannot regulate.

Now, here is No. 4: It is the only surgery for which payment is routinely demanded in advance, a practice that normally warrants the loss of surgical privileges.

Now, you know the abortion specialist who says, "Has your boyfriend got the \$300? Has your dad got the cash on the barrel head? Have your school friends passed the hat? Give me the money up front."

Now, again I ask you fairly, think about that with a gall bladder surgery, think about this if my great surgeon had said, "Congressman, I have been reading about the bank scandals in the Congress," say this had broken March instead of broken in September, "Congressman, I would like cash up front for your hip replacement surgery. That will be 28—or whatever—that will be thousands of dollars, please, in cash."

Now, an appendectomy or, imagine, a dentist saying, "You know, this molar is so impacted I recommend a root canal. Can I have \$400 up front, \$500, \$550?" That is going up fast.

No, this is the only surgery where the doctor says, "Money up front."

But, get No. 5 now, people, it is so unethical, so immoral. No. 5, abortion is

the only medical procedure for which clinics pay cash rewards for those who bring them clients.

Imagine an advertisement for an appendectomy, "You have an appendectomy and bring a friend, and we will give you half off. We will give you cash bounty if you bring us several friends who need gall bladder surgery. You have a cancer? The clock is ticking. You're afraid that it may metastasize? The biopsy shows it is benign? Hey, cash on the barrel head." But if you have problems paying in advance to have that dangerous cyst removed from your breast, bring in a few female friends who all have dangerous cysts in their breasts, and we will give you a bounty for each person you bring in. As horrendous as that sounds to the rational ears of any American man, woman or teenager, that is a fact with abortuaries across this country. Check it out.

Now, here is why I brought this newsletter of this Mission Viejo, CA, group of Birthright. I will close with this. I am going to read it in its totality.

This is a letter from a Birthright volunteer, the article is called The Miracle of Birth.

As a Birthright volunteer, I had run pregnancy tests on many young teenage women. However, on a Sunday night in April, when I ran one for our 17 year old daughter, it felt like my heart was in my mouth and my hands trembled. The test was positive. She and I looked at each other in disbelief and she began to cry.

I used all the counseling skills I knew. We told her that we would help her with any decision she made, except abortion. We would help her with the baby and support her one hundred percent. She said that she wouldn't go through with an abortion and that perhaps adoption was the best alternative for her.

This is why our President speaks on adoption, because he has two adopted children and loves them equally with the other 10 of his and Barbara's beautiful grandchildren.

Then she went back to school and things began to change. Her whole demeanor which had been open and vulnerable drastically altered. She became quiet and very distant. Where once we held her while she cried and talked, now she wouldn't allow us to touch her. I know that someone was attempting to change her mind and we soon learned who it was.

She called Planned Parenthood on the advice of a friend, and had been working with one of their counselors of death. As parents of a teenage girl it was nearly impossible to counter the logic they use on young women. They told her that she was grown enough to make her own decisions and that a baby would change her life forever. They said that they would be there for her and that they could make it all go away. Their insidious assertion that, your parents don't need to know because you don't need their consent anyway.

□ 1600

That is true in very State in this Union, although there are attempts now to change that.

This was the final weapon that any teenager needs when trying to do something that their parents do not approve of. It gives them permission to go against the belief system of their very own family.

Our daughter announced that she made a decision and told us that abortion was the only choice she could make. I asked her if she knew that she was killing her baby and our grandchild, and she said, "Yes." All of her answers were mechanical and void of any feelings. The only way that she was going to be able to do this thing was to steel herself against her own conscience and the reality of the abortion procedure.

Her abortion was scheduled for May 11. We had been praying since the pregnancy test, but now our prayers and the prayers of our friends took on a deeper, almost desperate, tone. We were all praying for the life of our grandchild. An abortionist was going to kill our daughter's baby, and there was little we could do about it. The father of the baby had told our daughter that he would pay for an abortion and take her to the clinic.

Cash on the barrel head, I am sure.

On the morning of May 11 our daughter left the house silent and withdrawn, a haunted, hollow look in her eyes. Our house became like a tomb. Neither her father, nor I, could speak. We prayed for our daughter and for the soul of the baby we would never see. This was totally in God's hands now, and we offered up our invocations and our pain. I knew that from that day forward our lives as a family would never be the same.

When she returned home that afternoon, she looked dreadful. She had been crying, and she acted as though she was walking in a dream, a terrible dream. They had given her birth control pills, anticoagulants, antibiotics and pain killers in a brown paper bag and sent her home to us.

I checked in on her that day, but I could not ask her how it went. I knew what they did to her and what happened to the baby. She went to school the next day. Our sense of loss was immense and dispiriting. The words "Thy will be done" echoed through our thoughts continuously. But never did I imagine what the Lord had in store for our lives.

On the day of her 4-week checkup at Planned Parenthood our faith in the power of prayer received a major jolt. She returned home from the appointment hysterical. The nurse who had given her the pelvic exam told her that her uterus was still enlarged. They gave her a pregnancy test and then told her that she was still pregnant. The abortion had been a failure, incomplete.

All of those so-called, quote, friends, unquote, at Planned Parenthood turned against her now and told her that this just never happens. They were frightened over the results of their treachery. They tried to schedule a re-suction, but our daughter fled the office and came home.

As she told me what happened, my mind was exploding with fear and relief at the same time. I even tried to talk to anyone who would answer down at Planned Parenthood, but they refused to speak with me, just a parent.

I asked the Lord to lead me and to help me in what must be done next. We had to find out if the baby was alive or dead. I made an appointment with the local OB/GYN doctor for the following day. That night we felt the Lord's power in our house, and I knew that I would be His instrument in the days to follow.

At the doctor's office I stayed in the waiting room while my daughter went in for her exam. A short time later a nurse came out and asked me if I would come in. There in a little room, her head hugging her knees, was my daughter. She was rocking back and forth, sobbing and saying something that I could not understand. I knelt down, and I heard, "I heard the baby's heart beat, mom. It was alive." Once again I felt the Lord's hand touch us.

The doctor asked her if she wanted to keep the baby, and she whispered, "Yes."

The next day at the ultrasound my daughter and I saw the baby for the first time. We could see her waving her arms and little legs and moving her head. Her little heart had been beating for days. We both just stared at the miracle before us. As far as we could see the baby looked perfect. The technicians made no comment, but they too knew from her records that this baby was one that Planned Parenthood missed.

On our way out the girl at the reception desk told my daughter with tears in her eyes, "This is a miracle." My daughter only said, "I know."

The doctor's office called me that afternoon and said that the doctor needed to see us about the result from the ultrasound. The tone in the nurse's voice was serious and for the first time I became afraid. However, something had happened to my daughter. She calmly told me, "Mother, there is nothing wrong with my baby." Her resolve was unshakable and I saw the light of Christ in her eyes.

The doctor was sitting behind a very large expensive desk. He looked somberly at my daughter and said that the results showed some abnormalities. He said that the baby was 10½ weeks old, and the ears look "unusual." He proceeded to talk in convoluted and contradictory medical terms and the alarm started to go off in my head. Something was not quite right with this conversation. I did not know him personally and had never been to see him before. He then told my daughter that this would be a good time to reconsider the pregnancy. This doctor wanted this baby dead too! My daughter looked at him and flatly told him no. I stood up and said that it was time for us to go and we left.

I believe this doctor was an instrument for the Lord who tested my daughter's faith. We made an appointment with a well-known pro-life ob/gyn. The first visit was spent trying to recount to this doctor everything that had happened so far. He looked across his desk at us in amazement and told my daughter, "This little baby is meant to be."

Her due date was December 25. Once again I felt His presence in the room. Ultrasounds were scheduled every two weeks for the rest of the pregnancy. Each one showed the baby to be growing normally with no physical abnormalities. By this time, the news of what was happening at our house was spreading through the Birthright community and our church. There was some serious praying going on now.

About my daughter's sixth month she had to be put on medication to stop premature labor because of a scare one night. The hospital got the pains stopped but they did not want to take any chances with "this one." However, once again, despite medical technology our granddaughter was born on November 24, '90 one month early.

Our daughter was in labor for only twenty minutes. The baby, our granddaughter was six pounds and absolutely perfect in every way.

There is a song that is sung during the Easter season at our church called, "We Who Once Were Dead." It says, "Let us share the pain You endured in dying. We shall then remain living, death defying. We shall rise again."

When I first looked at the face of this little soul that song began in my mind. She had once been dead to us but somehow she was lying in our daughter's arms. Our tears were tears of joy, faith, and resurrection. Our daughter had been chosen to know the full extent of Christ's love, protection and forgiveness. All our lives will never be the same.

At the end of this letter is a picture of a beautiful young teenager with that radiant look that the artist has captured in these very few black and white lines in this little painting, and in her arms is a perfect little person.

□ 1610

This, in case you did not know it, I learned years ago in an art class, is the most painted or photographed scene in every single civilization known to history. The most painted scene is a Madonna and her child. Not just in Christian art, but in all art.

Then the motto, the birthright of Mission Viejo, it is the right of every pregnant woman to give birth.

If our reporter from Roll Call, Mr. Speaker, who decided to describe my last pro-life speech as "Bobby's baby babble," is listening, he is probably thinking, quit while you are ahead. But I must bring something up to date with the agony that is going on on this Hill involving the other body, the U.S. Senate.

Mr. Speaker, the No. 2 lady now, with the incredibly beautiful name, at least for this Irish American, of Patricia Ireland, said about one of the Members of the other Chamber that we only care about how he votes on the House floor. A scandal was raging around this person yet again. That is all that matters. That is the bottom line, how he votes.

I can assure you, Mr. Speaker, if the distinguished justice of the ninth circuit court, Clarence Thomas, had raised his hand spontaneously and said to the assembled panel of the Judiciary Committee in the other body, "I swear to you, I affirm that I will uphold Roe versus Wade, I believe in abortion as a privacy right, don't worry about it," he would already be sitting on the Supreme Court.

The bottom line is that with rare exception, if Clarence Thomas was an avowed supporter of abortion—

The SPEAKER pro tempore (Mr. LANCASTER). The gentleman from California [Mr. DORNAN] will refrain from referring to proceedings in the other body.

Mr. DORNAN of California. Yes, Mr. Speaker. I should have learned that the other day. I do not know why I forgot that, because it is ongoing.

Let me rephrase it. If any nominee or any high body in this city announces their support for unlimited abortion,

for any reason under the Sun, for all 9 months, if that is their stated position, they will never encounter the ugly process that Justice Bork, who was then also a sitting judge of the Ninth Circuit Court of Appeals, they will never encounter any problems in the confirmation process, dredging up anything they had written, as Judge Bork was one of the most written justices in this country, and any speech they had certainly made, and he certainly made—

The SPEAKER pro tempore. The gentleman from California [Mr. DORNAN] continues to refer to proceedings in the other body. Would the gentleman please refrain from doing so.

Mr. DORNAN of California. Mr. Speaker, I would ask the Parliamentarian, I am referring to the Bork hearing of 3 years ago.

The SPEAKER pro tempore. The gentleman from California [Mr. DORNAN] has been characterizing the process as ugly and characterizing them in terms of a description of the kinds of proceedings that are going on.

Mr. DORNAN of California. Mr. Speaker, I was referring to the Bork proceedings. I did not mean to make any reference to the current proceedings. I will leave that to history.

The SPEAKER pro tempore. The Chair would advise the gentleman from California [Mr. DORNAN] it is still a proceeding of the Senate.

Mr. DORNAN of California. Even though it is a past proceeding? I stand corrected. Even though it is a past proceeding, the Bork hearings, I will not characterize it, because many of those Members are still sitting, as I am.

Let me put it this way again, as vaguely as I can: any proceedings, anywhere in this city, past, present, or future, you will never see the forces arrayed against any nominee in this country, where you see the abortion industry kick in with its billions of dollars in any election process, in the coming election year, anything that is remotely involved with politics, the abortion billions do not kick in if that person says, "I am for taking innocent human life for all 9 months, whether I believe it is life or not." Sometimes they concede medically, scientifically, it is life. "Don't worry about it, I am pro-abortion."

You won't see controversy in this decade of the gay nineties. It is a very sad nineties for many of us who are seeing, in my case eight grandchildren being raised, God willing more grandchildren in my own family, children being raised in this country. It is a tough procedure.

Suffice it to say, John Paul II in Rome said recently at the wonderful euphoric liberation of all the Eastern European nations, "At what price is freedom?"

He was talking not just specifically about the abortion issue, but young

people fleeing from East Berlin to West Berlin to go to the totally naked sex exhibitions, to avail themselves of the pornography shows.

In Hungary someone was bragging on the television show I saw that seven magazines exploiting women as animals, toys, playthings, play bunnies, Penthouse pets, Hustler flesh, all of that was popping up in Hungary because they had achieved freedom.

Is that freedom for women, in those countries or any country? Is it freedom for my four granddaughters? Is it freedom for my four grandsons? Is it freedom for my three daughters? Is it freedom for my two sons, one of whom is married? Is it freedom for my granddaughter? Is it freedom for my wife, or the memory of my mother, or the memory of one of my grandmothers who I had a chance to know and love?

No. What we have done to women in our culture is beyond description. It is so ugly, and to do it under the name of liberty and freedom.

I have seen some of our Members, Mr. Speaker, talk about what great defenders of the first amendment they are. Just remember that it was liberal philosophy, Mr. Speaker, liberal philosophy, hiding all pornography, particularly child pornography, according to the ACLU, behind the beautiful first amendment to our Constitution in that Bill of Rights.

As you reap, so shall you sow. We have reaped a whirlwind of moral decay in our country, or we have sowed it, so now we are reaping the whirlwind of what we have sown.

It brings great tragedy to this Member to see the beauty of freedom expanded to all of the 15 so-called republics in the Soviet Union, three of which have already become true nations, Estonia, Latvia, and Lithuania, and to see freedom brought to the nations of Eastern Europe, only to see some of those countries adopting the darker side of Western European and American life.

What we have done to the women in our lives, not protecting them, but rather making them objects of hedonism and rank pleasure and degrading our country. I believe, and I have said this on the House floor and I am going to continue to say it, that when we all, all of us, every man and woman in this Chamber, acknowledge the horror of narcotics, I repeat, narcotics, the drug plague, alcohol plague, anything that alters this God-given computer we call a brain, when we discuss this plague, I pose rhetorically this question to every fellow American: Try and tell your daughter or your granddaughter that it is wrong to smoke a marijuana cigarette, but she can kill a growing life in her body and do it behind her parents' backs. Try and convince her that drug use is wrong, alcohol abuse is wrong, but abortion is OK, and you are going to have a confused daughter. And we do

confuse our daughters. You are going to have a confused society. You are going to have a very confused culture that is tearing itself apart as we shed our blood of our young men and either young women in the gulf to bring freedom to an Islamic culture in the little nation of Kuwait, that has suffered so grievously.

We tear ourselves apart and we watch our cousins in the European capitals tear themselves apart, and we develop a cult, a cult of abortion in this country, that has permeated the dominant medical culture, our major newspapers, PBS, our national networks, owned and operated radio stations of those networks, where there is not a fulsome, bold, vigorous, wide open debate with medical pictures, charts, graphs, scientific knowledge about what life is in the womb. All of that is blocked out.

Then you hear these five only's applied to the abortion doctors of our country, and no other doctor, for what they can get away with, to take out innocent life.

Then when a vote on this House floor, albeit encompassed in the overall National Institutes of Health bill, which had excellent spending dollars to do something about cigarette smoking in this country and women's breast cancer and all the other great work that we do here, we still had, because those of us who are pro-life made the mistake not to single out fetal experimentation for a single vote, we had a vote encompassing fetal experimentation, 144 to 274. And we did not have a vigorous, fulsome debate in the House.

Until President Bush vetoes it, and he will, right now during what Jack Shay Kilpatrick, former Irish-American of great religious heritage, he says abortions can be used for fetal experimentation. My former friend, I guess he has broken off our friendship, called me an evangelical terrorist, along with one of my other colleagues from the minority side of the aisle.

It does not take an evangelical terrorist to point out that fetal experimentation is opening a Pandora's box of abuse, and that the image of Dr. Mangela, the angel of death on the train platform outside of Oswiecim, and the Birkenau major satellite camp of Auschwitz, where I walked with my son, Mark, on that path between the tracks, back and forth.

□ 1620

We spent an hour there, as I described to my 29-year-old son how Dr. Mengele, with his riding crop, would put it under the chin of children and mothers and select some to go off for his experimentations. He was particularly fascinated in a demonic way with twins. Some of those twins have survived while the other twin perished at Auschwitz in the Birkenau, all in the name of enlightenment in the Third Reich and reason and the advancement

of a superior perfected civilization in Nazi Germany.

All of that horror is creeping back into the life of this great country of ours.

An interesting footnote that I will close on, Mr. Speaker, I did a panel in Long Beach a few days ago, actually it was July 29, with Rush Limbaugh, Justice Bork, Brent Bozelle, a fascinating group of young people, a group called Media Research that tracked the name statements of some people in the dominant media culture, the liberals in the media.

On the panel was Lt. Gen. Tom Kelly. Listen to this little piece in this week's U.S. News & World Report on what has happened to a humble, simple Air Force general making \$65,000 to \$80,000 a year.

He now may make \$4 million this year as a lecturer. What message is American hungry for that they would pay this general \$4 million in the next year? Here is the little story.

Three star Lieutenant General Tom Kelly, who became something of a folk hero as the Pentagon's genial spokesman during the Persian Gulf War, has now emerged as the brightest star on the speech circuit.

I guess that means he is eclipsing a lieutenant colonel from the Marine Corps, Oliver North.

Since retiring six months ago, and may earn as much as 4 million in one year, more than 40 times his salary as a three-star Army officer. Kelly's patriotic theme gets a minimum of three standing ovations per speech. What is his speech title? America is back.

How could such a simple theme be so compelling a speech to be this received across the country is because the dominant media culture, liberal as it is, has been crushing the very essence of what is American across this land, what had a volunteer force of men and women willing, fighting if they were reservists or National Guard, Army, Air Force and Navy Reserve, Coast Guard, asking to go serve in Desert Storm and Desert Shield to liberate an Islamic country.

If America is back, truly and fully, it will never be back until we have found the soul of our country again. And that means respecting all human life from the moment of conception, particularly if you believe that is the moment a mortal soul comes into existence until the last spark of life is gone, without the benefit of organized suicide groups or forms of medical euthanasia, the entire life, the dignity, the sanctity of human life must be respected in any civilization worthy of the name civilization or culture.

I will return to this well for my remaining special orders which will all be on defense, military defense, since I am one of the conferees on the Senate-House Defense authorization bill.

Mr. Speaker, let me close with this: This fascinating story further illustrates my point about human life in the womb.

[From the Orange County Register, Oct. 5, 1991]

SAN CLEMENTE GIRL WHO WAS NEARLY ABORTED TRAVELS THE WORLD TO TELL HER STORY

(By Jane E. Allen)

WASHINGTON.—An Orange County girl whose mother tried to abort her in the third trimester said Friday that her survival is proof that fetuses are more than just "blobs of tissue."

Gianna Jessen, 14, of San Clemente said she does not blame her natural mother, who was 17 when she underwent a saline abortion procedure while 24 weeks pregnant. At birth, Jessen weighed just 2 pounds and had spinal bifida, a spine defect, and a mild case of cerebral palsy.

Michael Levitt, science-information officer at the March of Dimes, said spinal bifida develops much earlier in gestation than the 24th week and that a trauma in the mother's uterus at that time could not cause the defect. However, he said such a trauma could result in cerebral palsy.

"A person who has an abortion is a person without hope," said Jessen, an energetic, blond ninth-grader who has stopped attending local schools to travel internationally with her adoptive mother, telling stories of her survival and nurturing a singing career. "I feel it's only God that saved my life," Jessen said.

Roberta Synal, a spokeswoman for Planned Parenthood in New York City, said about 160 third-trimester abortions are performed each year.

She said the 1973 Roe vs. Wade Supreme Court decision makes abortion legal in the first three months; lets states regulate second-trimester abortions and allows third-trimester abortions only in cases of severe fetal abnormality or when the mother's life is in danger.

Susan Smith, associate legislative director of the National Right to Life Committee, said that while there are no hard figures on third-trimester abortions, she has seen estimates ranging into the thousands.

Jessen was brought to Washington by the Abortion Is Not Family Planning Coalition of anti-abortion groups in advance of nationwide protests Sunday.

Diana DePaul, Jessen's adoptive mother, said they had stayed away from protests in Wichita, Kan., at a clinic where third-trimester abortions are performed.

However, she said Jessen has testified on abortion before the Alabama Legislature and against the abortion drug RU-486 before the Los Angeles Board of Supervisors.

TRIBUTE TO DAVID RAMAGE

The SPEAKER pro tempore (Mr. LANCASTER). Under a previous order of the House, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized for 60 minutes.

Mr. MONTGOMERY. Mr. Speaker, I have taken this special order today to pay tribute to a good friend, David Ramage, who retired on September 1 after 36 years of loyal service to the House of Representatives.

Dave is a native of Wewoka, OK, and was active in civic activities and in politics in Oklahoma before coming to Washington. He was secretary of the Seminole County Election Board and he served as undersheriff of Seminole County for 2 years.

Dave came to the House of Representatives in 1955 under the patronage of Oklahoma

Congressman Tom Steed. Dave worked as assistant stationery clerk for 14 years. He then headed the House recording studio for around a year before taking over as majority printer in 1969. He served in that position until his retirement.

I have known Dave Ramage for 25 years. He is a good example of the kind of dedicated people who have made this House of Representatives run so smoothly over the years. The House as a whole will miss Dave Ramage's knowledge and his leadership.

And those of us who call Dave a friend will miss him on a personal basis. Dave is a charter member of our breakfast group that meets each morning in the Longworth cafeteria. All of us in the group have enjoyed his fellowship over the years and we all want to wish Dave the best in retirement.

Dave Ramage has had an outstanding career of service to the House of Representatives and I wanted to acknowledge Dave's contributions in a public way by taking this special order today. I am joined by several of my House colleagues, who also want to pay tribute to our friend.

Mr. WHITTEN. Mr. Speaker, I would like to take this opportunity to pay tribute to a long-time friend and colleague, who has faithfully served the House for a number of years and is now retiring.

Dave Ramage, majority printer for the House since 1969, will leave a long legacy of service to the House, to Congress and to the Nation. Having come to Washington from Oklahoma in 1955 under the patronage of Oklahoma Representative Tom Steed, Dave was assistant stationery clerk for 14 years before he took over the majority printer's office.

In his position as majority printer, Dave had occasion to know and help all of us at one time or another and has played a key role in our efforts to communicate with our constituents.

I will not only miss his professional advice and service, but also his friendship.

Mr. NATCHER. Mr. Speaker, as you know, our friend David R. Ramage, the majority printer, has decided to retire after 36 years of excellent service to the House of Representatives.

Dave Ramage has been good for the Congress of the United States and no employee ever loved the House of Representatives more. This was clearly evident all during his long service as an employee. He has always been ready to be of assistance to all of the Members and to the leadership. During his tenure he has established many friendships and has given of his time on many occasions to show his appreciation and affection for those who have been of assistance to him. The reason why the Congress operates as successfully as it does is because we have men and women like Dave Ramage who assist us every day. He is an exemplary figure and certainly will be missed by the Members of this Congress.

During my tenure, I have served with approximately 2,000 Members of Congress. A little over 11,000 have served in both the House and the Senate since March 4, 1789. I have no way of knowing how many employees that I have served with during my tenure, but I do know that none have been more faithful, loyal or dedicated than my friend, Dave Ramage.

Mr. Speaker, we will all miss Dave Ramage and I hope, as one of his friends, that he will return to visit with us on many occasions in the future. Especially does this apply to our breakfast club, which has been underway now for many years, and you will be interested to know, Mr. Speaker, that this is a club where no tall tales are told and no gossip is ever permitted.

Mr. STUMP. Mr. Speaker, I deem it a great honor and am pleased to rise today to call to the attention of my colleagues the retirement of a close friend, Mr. Dave Ramage. On this occasion, it is appropriate to acknowledge the retirement of a hard-working American whose outstanding service and presence is well-known within the ranks of the House as the majority printer. Dave will be sorely missed by the Members of Congress who have come to rely on his advice, talent and expertise, as well as the longstanding friendship we have all shared with him.

Throughout his distinguished career, he was always there to serve. A native of Wewoka, OK, he served and protected the United States for 2 years as a member of the Navy. During the Korean war, he again served this Nation when he was called back to active duty. In 1955, he came to the House of Representatives to serve Oklahomans in the office of Representative Tom Steed, he rose from the rank of assistant stationery clerk to head of the House Recording Studio to the position of majority printer. Dave has served this body well in many capacities for more than 35 years, and has earned the respect and friendship of many.

Although Dave has retired and is off to pursue other goals, his accomplishments through his hard work and perseverance on behalf of the House, will forever be remembered by those who have had the privilege of working with him throughout the years.

I join with my colleagues in wishing Dave a very happy and healthy retirement and every success in his future endeavors. I am proud to be his friend, and want him to know that he will be sorely missed in the halls of this great institution that he has served so well.

Mr. PICKETT. Mr. Speaker, I want to thank my good friend and colleague from Mississippi, Mr. MONTGOMERY, for requesting this special order to honor Dave Ramage, who has printed himself quite indelibly into the history of this institution.

Dave retired last month after a 36-year career with the House of Representatives. For 22 of those years Dave ran majority printers, which many of us have come to know and appreciate as an efficient and dependable operation. Dave worked closely with Members and their staffs to make sure that their printing requirements were met in a timely manner with a quality product. His knowledge, patience, and tact made him a favorite of many Members of the House.

In the 5 years that I have been a member of this body, I have had the opportunity to get to know Dave Ramage very well. Besides running a smooth operation down at majority printers, I know him to be a very fine, decent person who cares very much about this institution. I know that all of our colleagues wish him well as he enters upon his well-deserved retirement and hope that he will come back often to visit.

THE OMNIBUS BUDGET
RECONCILIATION ACT OF 1990

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. DELAY] is recognized for 60 minutes.

Mr. DELAY. Mr. Speaker, I take the well this evening to talk about, because today is the 27th day before the anniversary of that infamous day on November 5 when the President signed the Omnibus Reconciliation Act of 1990, the act better known as the budget agreement that was the result of a budget summit of last year that went on for months and culminated into a purported piece of legislation, a piece of legislation that purported to save us \$500 billion in deficit reduction over the next 5 years, that purported to bring discipline to the spending processes of this country, that would get us on the right track of reducing the responsibility of the American citizens for this huge Government of theirs and bring some reasonableness back into our economy and hopefully continue a growth pattern that was set up by the 1980's.

We are trying to bring this to the attention of the American people because what we were told would happen was refuted in the first few months of this year and certainly has been ratified by the figures that are coming out of the economists, out of the administration, out of CBO, out of the Joint Committee on Taxation and the Joint Economic Committee.

We are finding that not only was the information that was fed to the President and to the majority of this Congress and to this House wrong but that a wrong policy was made based upon that advice.

What has happened since the budget agreement was passed last year and implemented this year? Well, they made a \$1 trillion mistake. The deficit over the next 5 years will add up to well over \$1 trillion more than what they estimated it to be. The deficit for 1991 will be the largest deficit in the history of this country.

They say, those that made the inaccurate assumption last year, say that the deficit is running anywhere from \$320 billion to \$350 billion. We think it is going to be closer to \$400 billion for 1 year.

We are in a debt situation that is looking to be around \$10 trillion, placed upon the backs of our children and our grandchildren and now our great grandchildren and our great, great grandchildren.

And what have we done this year in this session of this Congress? Well, we started out the year by immediately trying to overturn the budget agreement by reneging on the agreement that the Office of Management and Budget would be the office that scores legislation for the coming year. We passed all kinds of legislation that in-

creased spending. We tried time and time again to break the budget agreement.

I keep using the word "we." I should not because that is incorrect.

The proper word would be the majority of this House and the majority of the Senate. When I use the word "majority" of the House, I am not necessarily saying the Democrat Party. I am saying the majority that controls this House.

There are about 30 to 40 very fiscally responsible Democrats that understand what happened last year and understand the dangers that we face.

□ 1630

But the liberal leadership of this House and the liberal leadership of the Senate, and the majority of the other side of the aisle that controls this House are responsible for what has happened. So I should use the word "they" because they are trying to cover up what was done last year by blaming what has happened last year and what the state of the economy is on the President, because they misunderstand this Government. The President does not pass anything. He either signs or vetoes, and quite frankly, if the Republicans enjoyed a majority of this House and a majority of the Senate we would not have had a budget summit, and I guarantee that the budget agreement of last year would have looked entirely different.

But we have seen in the last few weeks attacks on the President because he will not sign an unemployment compensation bill, craftily designed so that the President would have to veto it, politically designed so that the President would have to veto it. And we have seen Member after Member come down to this well and talk about how horrible it is that people are out of jobs all over this country, that jobs are being lost, there has been no job growth, that the President has been responsible for the loss of these jobs and the lack of job growth, and it is incumbent upon the President to increase spending, to pass more programs. No one seems to be coming down to the well from that side of the aisle talking about cutting spending, cutting taxes, writing a budget that brings discipline to this body, understanding the economics that drive this machine that we enjoy called the United States. No one seems to care why these people are losing their jobs and they try to cover it up so the American people will not understand it.

I am here to tell you, Mr. Speaker, the American people do understand it. They understand it when their local government, their State government and their Federal Government takes money out of their pocket, and particularly takes money out of the pocket of the company or the employer for whom they work. They understand that they

do not have enough money to create new jobs, to reinvest in new machinery to expand that business. They understand that when the Government takes money out of their pockets they do not have enough money to be out there spending, buying products that create jobs in order to make those products. They understand that. It is simple, but it is the way our system works.

Mr. Speaker, one of my constituents certainly understood it. He wrote a letter to the editor of the Alvin Sun in Alvin, TX. His name is H. Vincent. I do not know this person. I hope to come to know him because he has it nailed. He knows exactly what is happening in this country.

I quote him:

DEAR EDITOR:

By now I am sure you are aware that despite Congress' promises to use the new tax revenue to reduce the federal deficit they did the exact opposite.

That's right, Congress enacted the second largest tax increase ever had. Rather than reduce the deficit, they increased spending \$111 billion (and that doesn't include the Gulf War costs) and pushed the FY 1991 deficit to an all time record \$320 billion.

But if you're saying to yourself, "I remember hearing Congressional leaders promise that the new budget would mean a \$500 billion spending reduction in the years ahead. How can they say that?"

Let me explain. Only in Congress can you promise a \$500 billion savings at the same time you increase actual spending by \$111 billion. Here's how it works:

When Congress talks about spending cuts, they are not talking about cutting actual spending, but reducing projected increases. If Congress just reduces the amount of increased spending, they call that a spending cut—even though actual spending is still increasing.

Confused? Let me give you a simplified example. Let's suppose Congress today is spending \$1 on a program and they have budgeted to spend \$2 on the same program next year. However, if they spend \$1.75 next year they will call that a spending cut of 25 cents—even though they actually increased spending by 75 cents.

When Congress promised to save \$500 billion in the years ahead, this was not an actual cut of \$500 billion, it was a reduction in their "pie-in-the-sky" budget for the future. Even with their supposed \$500 billion cut, actual spending will still skyrocket.

The promise of deficit reduction was nothing more than a myth. Congress just wanted more taxes for more spending. And they would promise anything just to get more of our income.

Congress is bankrupting America.

I would like to correct Mr. Vincent right there. The majority that controls Congress is bankrupting America.

Because of Congress non-stop deficit spending, the interest payments on the national debt exceed a whopping \$256 billion annually. These interest payments on the ballooning national debt are already more than all the individual income taxes paid by everyone who lives west of the Mississippi River. We are rapidly approaching the day when we won't be able to make the interest payment on our debt. I'm sure you understand what happens if you can't make the interest payments on your debt.

I urge you to tell the American people the real story—that deficit spending is increasing, not decreasing as Congress promised. And tell them that the deficit represents a very grave threat to our future.—Signed, H. Vincent.

Mr. Vincent knows what is going on here. The American people know what is going on here. The problem is the American people are not telling their elected officials that they know what is going on here.

We have heard in this well, as I mentioned earlier, time and time again talk about the jobless in America, and we are going to expand an existing program to take care of the jobless. It is our contention on this side of the aisle, the minority, that the best way to take care of the jobless is to create jobs, to have growth in jobs, to have a job for that person who is out of work, to have them out there so that when they go looking for a job it will be there for them. That is the way to take care of jobs, not create a new program, not expand existing programs, not take more money out of businesses or out of the pockets of the American people and put it into inefficient Government spending that gets nothing, that creates nothing except more bureaucracy. The only way is to stimulate this engine that we call the economy, to get it going, to cut spending, to cut taxes, to create a growth agenda that gives businesses and individuals the incentive to save more and to invest more, creating jobs.

I want to get into that a little bit, Mr. Speaker, because today there was an article in the Washington Times that I just think explains all about it. It is entitled "Why Job Growth Has Come to a Standstill." We do not talk here on the floor about why these people that we feel for, and I feel for them because it is frightening to lose your job, but why did they lose their jobs? Why have we lost all of these jobs in the last few years?

This article is written by Warren Brooks, who is a nationally syndicated economics columnist. I urge, Mr. Speaker, that the American people ought to find him. If he is not in the local paper, Mr. Speaker, people ought to ask their local paper to get him, because this is a common sense type guy. He understands without all of the mumbo-jumbo, he understands why people are losing jobs. He understands what is going on in this body and the other body and in this Government, and he puts it very forthrightly and in such a way that even I can understand it.

He writes:

Last Friday's disappointing employment report showing a sharp slowdown in payroll job growth is yet another explanation why, since Labor Day, the Federal Reserve has abandoned its cautious optimism about recovery and cut both the discount rate and the Fed Funds rate by 50 basis points, or one-half percent.

The rate cuts were far larger than this particular Fed Board would like to have made, given their hard-won gains against the rising inflation levels of 1989 and 1990. They were triggered by a growing concern about the failure of the U.S. economy to show any signs of sustained recovery 14 months after the recession began.

While it is true manufacturing has shown modest recovery strength, that may just be replenishment of depleted inventories. Much of that "strength" has been in automobiles, whose consumer sales are 15 percent to 20 percent below a weak 1990.

Meanwhile, the usual indicators of recovery continue to be missing. Housing starts, while up, are still at 1.1 million, 600,000 below where they were during the initial stages of the 1983 and 1975 recoveries. Commodity prices and futures remain 10 percent below last year at this time with no sign of a normal recovery surge. Consumer confidence remains at recession levels.

Perhaps most ominous is the failure of the nation's largest money measure (M-2) to respond to Fed easing. Last April, the 13-week annualized M-2 growth rate was more than 7 percent. By the end of August, it was down to negative 1.2 percent, and has been lifeless since.

How, then, can a consensus of forecasters predict recovery in the rest of 1991 and for 1992, albeit a modest one with some predicting 4 percent to 5 percent growth next year?

History is still on their side. The average first-year recovery for all expansions since World War II is 6.7 percent. The trends in interest rate futures continue to imply strong investment expansion ahead.

Nevertheless, we are concerned that all these forecasting models ignore the truly "microeconomic" perspective that now faces the individual business, namely the incentives for that business to hire or to lay off. Last week's employment report showed those incentives are not yet working for a recovery.

There is a "micro-model" that captures those job-creating incentives, and that has been nearly unfailingly accurate in predicting both recessions and expansions since World War II. That model allowed us in March 1983 to predict a "massive employment boom" for 1983 and 1984. Over the next 24 months, total employment grew 4 million per year, one of the fastest increases in history.

The basis for our prediction back then was a simple analysis designed by Ohio University economist Richard Vedder when he was working at the Joint Economic Committee in 1982-1983. Mr. Vedder concluded that companies hired or fired on the simple expectation that the rising cost of an additional worker would be more than offset by the rising sales value and profits he would generate.

To "model" this, Mr. Vedder took as his cost base, the Unit Labor Cost data developed by the Bureau of Labor Statistics (BLS) and as his sales base, the total of Output Per Hour (productivity) plus the trend in consumer prices (CPI), also BLS numbers.

He assumed that if the "sales per worker" combination was rising faster than unit labor costs, employers would be encouraged to hire, and vice versa. He tested this model against all past contractions and expansions and found it a very effective, if not very long-range, predictor. He also found that the wider the "spread" between sales and costs, the more powerful the effect.

In March 1983, three months into that recovery, that "spread" or incentive as already

9.4 points "positive," a major turnaround from the four-quarter 1982, when it was 2.6 points negative. The spread widened hugely the next two quarters, correctly signaling a very strong employment expansion. (See Table.)

Similarly in 1975, the "spread" turned from 2.5 points negative to 22 points positive in the second quarter, and 18.9 points in the third, signaling a very powerful employment recovery. We got the strongest one in U.S. history.

But in 1991, though everyone has been claiming recovery since May, the "spread" has been negative in every quarter since September 1990, and the trend shows no positive signs. And why should it? Rising taxes and regulations will keep on driving unit labor costs up faster while damaging productivity. Companies will have little incentive to expand employment.

U.S. Chamber of Commerce economist Larry Hunter warns we are now "facing a growth gap [from the normal trend] of potentially historic terms," reminding us that "the administration itself is forecasting a permanent decline in our standard of living during the president's anticipated second term" (emphasis his). That's one forecast this administration is likely to fulfill.

GROWTH SPREADS—THE HIRING MODEL

[In percent]

Quarter	Unit—		
	(1) labor costs	(2) sales worker	(3) spread 2 minus 1
1975-1	10.4	7.9	-2.5
1975-2	-4.2	17.8	22.0
1975-3	-2.2	16.7	18.9
1982-4	4.0	1.4	-2.6
1983-1	1.3	10.7	9.4
1983-2	-4.7	11.5	16.2
1990-4	4.7	3.0	-1.7
1991-1	4.5	2.0	-2.5
1991-2	4.3	3.7	-0.6
1991-3 estimate	3.8	4.1	0.3

Source: Bureau of Labor Statistics Calculation of "spread" by author.

□ 1640

Seems a little bit like *deja vu*, because I remember standing in this well about this time last year debating the budget agreement pleading with the majority of this House that you do not raise taxes in the face of a recession, that if you do, people will be losing their jobs, because people will be losing the opportunities to invest in new jobs, and people will be seeing those disincentives to hire people, because they do not think that they will be able to offset the amount of money, and it is usually \$140,000 to create a job, they do not see the incentives that in the selling of their product they will be able to offset the cost of putting somebody into a new job.

What has happened? Not only did the recession last longer than we were told by OMB and CBO, because they sort of flit it aside by saying, "Oh, listen, the recession is not going to last more than through the summer, because most recessions average 11 months." Well, we are in our 14th month; we are in our 14th month. It is worse than the one in the early 1980's, because people are losing their purchasing power. In other words, they are people who do

have jobs who are losing their standard of living. It is going down, and it will not be recovered.

Now, we have been bashed on this floor all summer about fairness, that if you give business people the incentives through tax cuts and give their money back to them and let them hang on to it, that is unfair, and that you are punishing the poor and you are playing to the rich. You are creating jobs, and that is unfair. It just amazes me.

Well, there was a paper recently, in fact, on October 15, it will be released, by the Heritage Foundation, done by Daniel Mitchell, the John M. Olin fellow at the Heritage Foundation, that I think is one of the best pieces written about the tax rates, fairness and economic growth and the lessons that we learned from the 1980's, the lessons that we have seemed to just throw out the window. In his introduction, he writes:

One year after a record tax and spending increase, the American economy is reeling. Two million Americans have lost their jobs, personal and business bankruptcies are at all time highs, and family incomes are falling. With little prospect of a strong recovery in the near future, policy makers are coming to realize that actions must be taken to jumpstart the economy. A consensus is emerging that tax relief is necessary—perhaps even the key—to restoring economic growth, but the proposals now before Congress rely on radically different approaches to the problem.

Some legislators continue to believe that the current recession is the culmination of Ronald Reagan's policies, particularly his tax cuts. These lawmakers, led by Senator Albert Gore of Tennessee and Representative Thomas Downey of New York, both Democrats, have introduced legislation (H.R. 2242, S. 995) that would grant tax relief to low-income families but sharply increase marginal tax rates for higher-income taxpayers. Supporters of this legislation assert that Reagan's economic policies hurt the poor and therefore would amend the tax code to achieve more "fairness" and income equality as well as, they hope, to trigger economic growth.

Tax cut remedy. Other legislators believe the recession is due at least in part to last year's record tax increase. These legislators believe that the way to rejuvenate the economy is to enact tax cuts that would increase incentives to work, save, and invest. The Economic Growth and Jobs Creation Act (S. 381, H.R. 960), introduced by Senator Malcolm Wallop, the Wyoming Republican, Representative Tom DeLay, the Texas Republican, and Representative Robin Tallon, the South Carolina Democrat, would reduce payroll taxes, lower the capital gains tax, expand Individual Retirement Accounts, and cut taxes on business investment.

Supporters of the Wallop-DeLay-Tallon bill point out that America enjoyed its longest-ever period of peacetime economic growth after Ronald Reagan's tax cuts took effect, and that the income of all segments of the population rose sharply in the 1980s. These advocates of "supply-side" economics reject the notion that tax cuts for some Americans must be offset by tax increases for others. In fact, they argue that such an approach likely will reduce revenues to the United States Treasury, leading to higher

budget deficits and pressure to impose higher taxes on all income groups.

Reagan success. As lawmakers consider these and other tax relief plans, they would do well to learn the public policy lessons of the 1980s. By every measure of prosperity, Reaganomics worked. Some twenty million new jobs were created. Inflation was brought under control. And inflation-adjusted income rose for all segments of the population. Much of the credit for this spectacular economic performance goes to the 1981 Economic Recovery Tax Act, which cut tax rates across the board for individuals and reduced the tax burden on business.

If policy makers want to restore economic growth, they should heed the following lessons of the 1980s:

Lesson #1: Economic growth is the best weapon against poverty.

Lesson #2: Economic growth is stimulated by low taxes, particularly low marginal rates.

Lesson #3: The poor get richer when the rich get richer.

Lesson #4: If the aim is to make the rich pay more actual taxes, cut their tax rates.

Lesson #5: Raising taxes on the rich does not help the poor.

Lesson #6: Increased Social Security taxes have wiped out the benefits of Reagan's tax cuts for many Americans.

Lesson #7: Hiking taxes does not lower the budget deficit, it raises it.

While there is much about the U.S. economy that economists cannot explain, the current recession is no mystery. For nearly six months last year, politicians debated which taxes they should raise. This created uncertainty in the financial markets, lowered consumer confidence, and undermined investors' faith in the future. The prolonged debate resulted in the Bush Administration and congressional Democrats agreeing to saddle workers, consumers, and businesses with the largest single-year tax increase in America's history. When combined with then enactment of costly new regulatory legislation such as the Clean Air Act and the Americans with Disabilities Act, this tax increase was a body blow to an already fragile economy.

Reducing the tax burden alone will not undo all the economic policy mistakes of the last two years, but a strong economic recovery is unlikely in the absence of a pro-growth tax package. Not all tax cuts, however, are created equal. The Wallop-DeLay-Tallon and Gore-Downey tax bills are radically different. Fortunately, lawmakers need only look back over the last fifteen years to determine which approach will work.

THE ECONOMIC BOOM OF THE 1980S

During the 1980s Americans enjoyed an unprecedented economic boom. Reagan's Economic Recovery Tax Act of 1981 set the stage for this record expansion by reducing the tax penalty against business investment and sharply reducing, in three stages, income tax rates for individuals. Once the tax rate reductions were fully phased in, the economy took off.

Not only did Reaganomics produce the longest expansion in America's peacetime history, it did so while simultaneously reducing inflation, a feat that many economists believed could not be accomplished. Reducing marginal tax rates, along with regulatory relief and sound monetary policy, proved to be a potent prescription for an ailing economy. During the Reagan boom, inflation-adjusted gross national product (GNP) rose 32 percent and median family income hit record levels. Thanks to the cre-

ation of twenty million new jobs, the proportion of the U.S. population holding jobs reached a new record of 63.1 percent.

Refuting critics. When first proposed, many critics rejected the central tenet of Reaganomics—that lower marginal tax rates would increase incentives to work, save, and invest, and thus would ignite an economic expansion that would improve the living standards of all Americans. These critics maintained that increased government spending is the engine that drives the economy. Tax cuts, by contrast, were condemned as inflationary. The record expansion with lower inflation which followed the Reagan tax cuts conclusively refuted these critics.

Broad statistics, however, do not present a complete picture of the economic situation in the 1980s. The untold story is how low taxes benefitted those Americans who traditionally had not enjoyed the fruits of the country's prosperity. Income levels for almost every demographic group had begun to decline sharply in the late 1970s. But once Reagan's policies took hold, the statistics reversed. Inflation-adjusted median household income for black Americans, for instance, jumped by 16.5 percent between 1982 and 1989, after declining by 10.2 percent between 1978 and 1982.

Women also realized significant benefits from Reaganomics. Their inflation-adjusted median income climbed by more than 28 percent between 1981 and 1989, after declining by 2.9 percent between 1977 and 1981.¹ And while some critics maintain that the poor suffered under Reagan, the average inflation-adjusted income of the bottom 20 percent of families rose 11.9 percent between 1982 and 1989. By comparison, the same income group saw their inflation-adjusted incomes decline by 12.7 percent from 1978 to 1982.

Despite the economy's spectacular performance during the 1980s, many lawmakers were determined to reverse Reagan's policies. Indeed, almost from the moment the Economic Recovery Tax Act was signed into law in 1981, lawmakers on Capitol Hill pushed for higher taxes, succeeding on several occasions during the 1980s. The ill effects of those tax hikes, however, were at least partially offset by further tax rate reductions included in the 1986 Tax Reform Act. As a result, reduced tax rates helped assure that the record economic expansion was still going strong when George Bush was inaugurated in 1989.

THE 1990 BUDGET FIASCO

It did not take long for Congress and the new Administration to reverse many of Reagan's accomplishments. A relatively small \$5.6 billion tax increase in 1989 was followed by the 1990 budget summit agreement. The uncertainty created by nearly six months of summit negotiations and the eventual imposition of nearly \$200 billion of new taxes over five years was a major cause of the recession. Just as tax cuts helped spark the longest

¹Economists continue to debate what year marks the beginning of Reaganomics. Some say 1980, when Reagan was elected President. Many use 1981, since that was the year that Reagan actually took office. Others note that the budget for fiscal 1981 already had been signed into law by Jimmy Carter before Reagan was inaugurated. Reagan's first budget was for fiscal 1982. Some economists contend, however, that Reaganomics did not begin until 1983, the first year in which the tax rate reductions were fully phased in. There is no completely accurate answer to this controversy. What is safe to say, and is supported by the statistics cited in this study, is that after beginning to decline in the late 1970s, most measures of economic well-being recovered in the early 1980s and improved dramatically throughout the decade.

peacetime expansion in America's history, the largest tax increase in history helped bring the economy to a shuddering halt.

Supporters of the 1990 budget agreement, which set spending and tax policies for 1991 and beyond, claimed the tax hike was needed to reduce budget deficits, then projected to exceed \$150 billion in 1991. Opponents of the budget package warned that budget summits in 1982, 1984, 1987, and 1989 all resulted in higher taxes ostensibly designed to reduce the deficit, yet in every case the budget deficit rose the following year. Opponents also warned that a major tax increase would throw the economy into recession. They further predicted that Congress simply would spend the new tax revenues.

They were right. The budget deficit climbed to nearly \$300 billion in 1991, the first year of the agreement, and is now projected to reach record \$350 billion in fiscal year 1992 thanks largely to record increases in domestic spending. And a sharp recession is expected permanently to lower living standards for all income classes compared to what they would have been had the economy's growth not faltered.²

Ignoring history. Ironically, even though the dismantling of Reagan's economic legacy ended the expansion and pushed the economy into recession, some lawmakers assert that additional tax increases somehow will strengthen the economy. Other lawmakers apparently believe that while Congress should cut taxes for some Americans, it should raise taxes on others. Still other politicians argue that the best way to help poor citizens is to increase taxes on wealthier Americans.

Lawmakers who support these policies claim "fairness" requires income redistribution, higher taxes, and more government spending. America's less fortunate citizens, however, historically have not fared well under such policies. If lawmakers truly are interested in helping the poor, they should adopt policies to promote economic growth, not redistribute income. Whether measured by job creation, income growth, the poverty rate, or any other indication of living standards and prosperity, the poor have done best in years when the economy expands.

THE CHOICE FOR CONGRESS

Policy makers now face what should not be a difficult choice: Do they return to the pro-growth policies of the 1980's? Or, do they replicate the mistake of the 1970s, heaping additional taxes and regulations on an economy already staggering under a record tax burden and an unprecedented wave of expensive regulation? The lessons of the 1980s provide an easy answer.

Lesson No. 1: Economic growth is the best weapon against poverty

Many politicians in Washington would like Americans to believe that poverty can be cured by more federal programs. In reality, high increases in spending have had little impact on poverty, and may have exacerbated the problem. It was only after the so-called War on Poverty began in the mid-1960s that the poverty rate, which had been falling rapidly and steadily since the early 1950s, leveled off. Like other measures of economic distress, the poverty rate began to rise in the late 1970s, rising from 11.4 percent in 1978 to 15.2 percent in 1983. It began to fall, however, once Reagan's policies took effect, dropping to less than 13 percent by 1989.³

² See Larry Hunter, "The Never-Ending Recession," *The Wall Street Journal*, September 19, 1991.

³ Census Bureau statistics routinely overestimate poverty in the United States. It probably safe to as-

sume, however, that changes in the poverty rate do reflect whether poverty is rising or falling, even if the totals are exaggerated. See Robert Rector, Kate Walsh O'Beirne, and Michael J. McLaughlin, "How Poor are America's Poor," Heritage Foundation Background No. 791, September 21, 1990, and Robert Rector, "Why the New Census Report Will Overstate Poverty," Heritage Foundation Executive Memorandum No. 309, September 23, 1991.

Lesson No. 2: Economic growth is stimulated by low taxes, particularly low marginal tax rates

Other measures of the economy's performance reveal similar trends. For example, inflation-adjusted average household and family income statistics for the poorest fifth of the population indicate that low-tax policies in the 1980s raised living standards for less fortunate Americans. The incomes of poor households stagnated for much of the 1970s, began to decline sharply in the late 1970s, and rebounded only after Reagan's tax cuts were fully in place. If the 1990 numbers are the beginning of a new trend, it appears that high tax-and-spend policies under the Bush Administration will have the same damaging impact on Americans as Jimmy Carter's big government policies.

While accepting that the economy grew in the 1980s, some analysts assert that this prosperity had nothing to do with Reagan's policies in general and his tax cuts in particular. Some even claim that income levels for the poor would have increased faster had it not been for Reaganomics. Yet after taking the effects of other economic factors into account, the evidence still points clearly to low-tax policies as the leading cause of record growth in the 1980s. With the myriad forces that affect economic growth, there is no way to determine precisely the influence of any single policy on the economy. The Great Depression of the 1930s, for instance, resulted in part from poor monetary policies and trade protectionism. Herbert Hoover's decision in 1932 to raise taxes in the middle of the economic downturn doubtlessly exacerbated the economy's contraction. But it cannot be said with precision how much the tax increase contributed to the Depression.

TABLE 1.—AVERAGE INCOME FOR POOREST 5TH OF U.S. HOUSEHOLDS (In 1990 dollars)

Year	Income of households	Change in dollars
1973	\$7,039
1974	7,008	-31
1975	6,765	-243
1976	6,935	+170
1977	6,897	-38
1978	7,135	+238
1979	7,075	-60
1980	6,845	-230
1981	6,676	-169
1982	6,549	-127
1983	6,631	+82
1984	6,838	+207
1985	6,819	-19
1986	6,886	+67
1987	7,055	+169
1988	7,143	+88
1989	7,732	+229
1990	7,195	-177

Note.—Shaded areas indicate increases.
Source: "Money Income of Households, Families, and Persons in the United States: 1990," Bureau of the Census.

The economic decline which began in the late 1970s also was partially due to high taxes. But other factors such as inflation and excessive government regulation of businesses contributed to the stagflation which plagued America. Similarly, while the 1980s expansion may have been triggered by Reagan's tax cuts, policies of deregulation and monetary reform certainly deserve some credit for the boom.

Some critics condemn economic policies of the 1980s because wealthier citizens' incomes rose faster than did the incomes of the least affluent fifth. While true, this criticism overlooks one very important fact: poorer Americans' incomes increased in real terms during the 1980s. If a goal of policy makers is to improve living standards for the poor, the Reagan policy of reducing tax rates on the rich as well as the poor did more to improve the standard of living of low-income households than the high tax policies of the Carter and Bush Administrations.

The evidence strongly indicates, however, that reducing taxes, particularly marginal rates, had a major impact on the economy. The three periods of major tax rate reductions in the U.S.—the 1920s, the 1960s, and the 1980s—were all periods in which lengthy and robust economic expansions followed tax cuts. By contrast, tax increases have been followed by weak economic conditions. In the 1930s, higher tax rates were associated with economic hard times. In the late 1970s, tax rates were hiked indirectly, as inflation pushed taxpayers into higher brackets even though their real incomes remained constant or even declined. And, of course, the tax rate increases in last year's budget deal already have hobbled the economy and may signal the beginning of a longer period of stagnation.

Lesson No. 3: The poor get richer when the rich get richer

Advocates of income redistribution through the tax code tend to assume that the amount of wealth in a society somehow is fixed. In this static view of the world, one person can become better off only at the expense of another. Similarly, the assumption is that if the rich get richer then the poor must become poorer. This view of the world, however, is completely at odds with the evidence. As Table 2 indicates, the fortunes of all income classes tend to rise or fall together.

The Census Bureau's household income statistics underscore John F. Kennedy's contention that "A rising tide lifts all boats." When the economy prospers, the poor are just as likely to realize the benefits of economic growth as are those in higher income classes. Similarly, if policy makers adopt anti-growth policies, for the stated purpose of "helping" the poor, all income groups suffer.

The household income figures also indicate that the Reagan years benefitted all income classes. Even in the base year used in 1981—before the Reagan tax cuts were phased in—the figures show significant income gains for all segments of the population during the 1980s. By contrast, periods of increase taxation, including both the Carter and Bush Administrations, are associated with falling average incomes for all groups.

TABLE 2.—PERCENTAGE CHANGE IN AVERAGE HOUSEHOLD INCOME BY INCOME CLASS (In percent 1990 dollars)

Year	Bottom 5th	Second 5th	Middle 5th	Fourth 5th	Top 5th	Top 5 percent
1978-82	-8.2	-5.4	-5.2	-3.8	-1.1	-3.2
1981-89 ¹	+10.4	+10.3	+10.7	+12.3	+22.9	+33.6
1982-89 ²	+12.6	+10.7	+11.1	+13.0	+20.5	+28.8
1989-90	-2.4	-1.7	-2.3	-22.6	-3.3	-4.7

¹ Increase.
² Reagan tax cuts take effect.
Source: "Money Income of Households, Families and Persons in the United States: 1990," Bureau of the Census.

Some critics condemn economic policies of the 1980s because wealthier citizens' incomes rose faster than did the incomes of the least affluent fifth. While true, this criticism overlooks one very important fact: poorer Americans' incomes increased in real terms during the 1980s. If a goal of policy makers is to improve living standards for the poor, the Reagan policy of reducing tax rates on the rich as well as the poor did more to improve the standard of living of low-income households than the high tax policies of the Carter and Bush Administrations.

Lesson No. 4: If the aim is to make the rich pay more taxes, cut their tax rates

Critics of Ronald Reagan assert that tax rate cuts in the 1980s meant wealthy Americans paid less than their fair share of taxes. Indeed, Robert S. McIntyre of Citizens for Tax Justice, a Washington, D.C.-based research organization, contends tax breaks for the rich during the 1980s are the sole cause of today's budget deficit.⁴ Yet the assumptions required to support this assertion border on the absurd. To achieve his results, McIntyre takes 1977 tax rates and applies them to current income levels to determine the size of the tax cut received by the rich. In other words, his "model" just assumes that the economy would have expanded just as much had the top tax rate stayed at 70 percent, rather than being cut to 28 percent during the Reagan years. The "model" also conveniently assumes that wealthier taxpayers would earn and report just as much income with 70 percent tax rates as they are projected to earn and report next year with tax rates at 31 percent.

Not surprisingly, Internal Revenue Service statistics paint a very different picture. According to IRS data, wealthier Americans are now paying a far larger share of the total tax burden today than they were before the Reagan tax cuts. As Chart 2 reveals, the richest one percent of U.S. taxpayers shouldered 27.5 percent of the total income tax burden in 1988, up from 17.6 percent in 1981. The proportion of the income tax burden paid by the top five percent jumped from 35.1 percent in 1981 to more than 45 percent in 1988.

Confronted by these statistics, some critics complain that the rich are paying a higher portion of the income tax burden only because their incomes rose so dramatically during the 1980s when compared with those of other Americans. Yet this is precisely what advocates of low tax rates predicted would happen. Once marginal tax rates were reduced, they said, the incentive to work, save and invest would increase, while the attractiveness of tax shelters would be reduced. As a result, taxable income would increase significantly. Moreover, as Lesson #3 explains, this income gain did not come at the expense of other groups of Americans. Incomes for all groups rose during the 1980s.

Lesson No. 5: Raising taxes on the rich does not help the poor

With the economy in recession and the burden of federal taxes at an all-time high, according to the Washington, D.C.-based Tax Foundation, some policy makers finally have concluded that tax relief is needed. For example, Senator Albert Gore of Tennessee and Representative Thomas Downey of New York, both Democrats, have introduced legislation which would, among other things, lower taxes on families by creating a \$800 tax credit for each child (H.R. 2242, S. 995). Senator Lloyd Bentsen of Texas and Representative Dan Rostenkowski of Illinois, the Democratic Chairmen of the tax-writing committees in each chamber, are rumored to be drafting similar legislation. That is the good news.

The bad news is that the Gore-Downey legislation also raises the top income tax rate to 36 percent, from today's 31 percent, and imposes an additional 15 percent surtax on upper income taxpayers. The combined effect of these two provisions would push marginal tax rates to more than 40 percent for certain taxpayers. While this boost in the top rate allegedly is designed to promote "fairness"

and offset the revenue loss caused by the tax credit for children, neither goal will be satisfied if history is an accurate guide.

Increasing the top tax rate by approximately one-third, as the Gore-Downey bill would do, means reducing significantly the prospects for a strong recovery from the current recession. As Lesson #1 illustrated, the poor are most dependent on economic growth for their well being. Thus while the Gore-Downey bill might in the short term benefit those taxpayers eligible for the tax credit, the package would in the long term hurt lower-income households because higher marginal tax rates mean economic growth would slow down, fewer jobs would be created, and living standards would decline. Supporters of the Gore-Downey legislation fail to understand what has become so evident to the emerging democracies of Eastern Europe; it is better to promote the creation of wealth than it is to attempt to redistribute it.

Flawed Calculations: The Gore-Downey redistribution legislation is based in part on deeply flawed calculations used by the Congressional Budget Office (CBO). The CBO uses estimates that predict higher tax rates will generate revenue to offset the losses to the Treasury caused by the children's credit. But the static model used by the CBO assumes taxpayer behavior is unresponsive to changes in the tax code. As a result, even huge increases in tax rates are projected to raise large amounts of new tax revenue according to the CBO model.

Practical experience refutes this. Last year's tax increase, for instance, initially was projected by CBO to raise nearly \$200 billion in revenues by 1995 above and beyond the revenue growth otherwise projected to occur. Recent CBO budget projections, however, now estimate that revenue in the 1991-1995 period will be lower than that projected for the same period in the summer of 1990—before last year's tax increase was enacted. The Congressional Budget Office attributes this huge revision to "economic" and "technical" factors.

Lesson No. 6: Increased Social Security taxes have wiped out the benefits of Reagan's tax cuts for many Americans

Despite the reductions in marginal tax rates enacted in 1981 and 1986, total federal tax rates, the percentage of income paid to Washington through direct taxation, actually are higher today for middle class Americans than they were before Ronald Reagan became President. Meanwhile, total federal tax rates have declined for the richest taxpayers. This has led some policy makers to condemn the Reagan tax cuts as a giveaway to the rich at the expense of the poor.

Federal income tax rates for all income classes were reduced by the Reagan tax cuts and remain lower today than they were under the Carter Administration. The reason total federal tax rates have increased for many taxpayers is because of rapidly escalating payroll taxes. In other words, income tax rates reductions for many Americans have been completely wiped out by increases in Social Security and Medicare taxes. To add insult to injury, the Social Security system collects far more money than is needed to pay retirement benefits. Most Americans assume the surplus funds are put into an account, safely tucked away and drawing interest to help pay retirement benefits for future generations. In reality, Congress spends every penny of this money on other government programs, leaving nothing but IOUs in the Social Security Trust Fund.

Because wealthier taxpayers are less affected by rising payroll taxes, since there is

a cap on the amount of income subject to such taxes, lower- and middle-income taxpayers have been harmed disproportionately by rising payroll taxes. The important question, of course, is how to address this inequity. Some legislators apparently believe higher income taxes on richer taxpayers are the way to offset high tax rates on the middle class. These politicians overlook, of course, the fact that raising taxes on upper-income Americans will do nothing to lower the payroll tax burden on less affluent citizens.

The pro-growth solution to high effective tax rates is to reduce Social Security payroll taxes. Not only would the reduction in these tax rates spur additional economic growth, it would put an end to the fiction of the Social Security Trust Fund.⁵

Lesson No. 7: Hiking taxes does not lower the budget deficit, it raises it

Perhaps the most important lesson of all to learn from the 1980s is that tax increases led to higher rather than lower budget deficits. Tax increases were imposed on the American people in 1982, 1984, 1987, 1989, and 1990. On each occasion the legislation was accompanied by promises that the money would be used for deficit reduction. In every instance the deficit rose the following year.

The reasons for this are simple. Notwithstanding the Congressional Budget Office's simplistic, static model, higher taxes inhibit economic growth. As a result, even if a tax increase does bring in some additional revenue, this new money rarely if ever reaches the level predicted when taxes first are raised. This typical shortfall on the revenue side is compounded by the way in which the federal budget process works. Congress bases its spending decisions on how much money it expects to receive so boosts in spending invariably outstrip rises in revenue after a tax increase. Thanks to this process, last year's budget deal turned a \$150 billion deficit into \$350 billion of red ink in just two years.

CONCLUSION

The impulse of many lawmakers to enact tax relief to counter the recession is understandable and sound. What is difficult to understand, however, is why some lawmakers think the way to improve living standards for the poor is to raise taxes on the rich.

Largely as a result of the 1990 budget summit, a strong expansion was turned into a recession in a remarkably short period. While some members of the Bush Administration claim that the President had to violate his promise not to raise taxes because Congress would have overridden his veto anyway, there was no evidence, before or after the budget summit, to support this assertion. The legislative branch, in fact, has never been able to raise taxes over the objection of a President.⁶

By caving in to pressure for higher taxes, the Bush Administration presented the big spenders in Congress with a long-awaited opportunity. As long as the President maintained his vow not to increase taxes, the American people resisted the siren song of tax fairness. But once the budget summit began, and the President was persuaded by members of his own Administration to ac-

⁵Daniel J. Mitchell, "The Facts About Cutting Social Security Taxes," Heritage Foundation Backgrounder No. 817, March 15, 1991.

⁶Congress actually did enact a tax increase over a presidential veto on one occasion. Franklin D. Roosevelt vetoed a tax increase because it was not as large as he desired. Rather than vote for an even larger tax hike, however, Congress overrode his veto.

⁴Robert S. McIntyre, "Borrow 'N' Squander," "The New Republic," September 30, 1991.

cept a tax increase, many Americans understandably wanted the burden of any new taxes to fall on someone else's shoulders. Since few Americans consider themselves wealthy, regardless of their earnings, and since few Americans truly understand the relationship between tax rates and growth, proposals to "tax the rich" tend to be popular with voters.

The 1990 budget summit also was a victory for those lawmakers who viewed Reaganomics as a threat to the growth of government. For these lawmakers, the 1981 tax cuts had to be repudiated to restore the pre-Reagan political dynamic. Now, thanks to last year's budget deal, politicians once again can press for higher taxes and vote for more spending under the guise of tax fairness and deficit reduction.

Tragic Cost: The recession has imposed a tragic human cost. Two million Americans have lost their jobs, the poverty rate is climbing, and family incomes are falling. Sadly, the news may get worse. Yet under the deceptive rubric of tax fairness, some lawmakers want to compound the damage of last year's tax hike by further raising marginal tax rates. As the last fifteen years clearly show, however, the poor will not be helped by tax increases because the result will be slower growth.

Choice for Bush: George Bush already has presided over the slowest period of economic growth of any President since Franklin D. Roosevelt's first term. Whether the economy begins to recover may depend on what he does next. If Bush returns aggressively to the pro-growth policies of the 1980s, there is every reason to expect that the economy will respond as vigorously as it did during the Reagan boom. On the other hand, if Bush fails to make the case for low taxes, and to veto any tax increase legislation, America may face a decade of economic stagnation.

□ 1650

Mr. Speaker, I will enter all this paper by Dan Mitchell into the RECORD.

Mr. Speaker, what does all that mean? What Dan Mitchell is writing is that this body, and particularly the majority that controls this body, cannot read history and have no capability to recognizing history. The history of the eighties is proof that Reaganomics and supply-side economics work. Twenty million new jobs, the longest economic expansion in the history of this country. Why? Because in spite of what happened in the later eighties, the policies of the Reagan administration were right, in that if you let people control their own destinies by controlling and keeping their own money, they will do what is right. They will spend their money properly. They will invest their money in the right areas and jobs will be created.

The saddest thing about this coming anniversary of the passage of the budget agreement, the saddest thing is that the American family is losing, and if the American family wants to win they had better get involved in what is going on around them.

If you read the papers for the last year or 1½ years, every level of government is raising taxes and increasing spending. In most levels of government

that I have seen—there are a few exceptions—but most of them try to dupe the American people by saying, "We will cut this much spending if you will go along with increasing taxes by this much," and in every case that has happened, spending has gone up the very next year by such a rate that offsets the promise of the cutting and spending increases, yet the taxes stay.

Our governments are growing too big, Mr. Speaker, and the American family is losing ground. The American family is the loser in what is going on right here on the floor of this House and in the other body.

A brief that was just issued by the Tax Foundation explains it very well. It is entitled, "The American Family Losing Ground to Taxes and Inflation." It is written by Paul J. Merski. It really brings it home, in terms that we can understand, what is happening to the family in this country.

Paul Merski states:

AMERICAN FAMILY LOSING GROUND TO TAXES
AND INFLATION

(By Paul G. Merski)

Accelerating federal taxes will combine with inflation to take \$362 dollars out of the pocketbook of the American family in 1991. The typical family—a household with two earners employed full-time, year-round with two dependent children—will suffer this loss in real income in 1991 after losing purchasing power in two of the three prior years for a 4-year loss of \$695 since 1988. The \$362 loss this year is the largest one-year decline since 1981.

The two-earner family making \$29,627 back in 1980 is now earning an estimated \$53,265. But when federal taxes and inflation have taken their cuts from this \$23,638 increase, a mere \$2,835 net gain is left, nearly a 90 percent loss.

Since 1980, the typical family's federal income tax bill has risen 60 percent despite the decade's two major income tax rate reductions: the Economic Recovery Tax Act of 1981 and the Tax Reform Act Of 1986. They did lighten the income tax burden, but their benefits to the typical family have been overwhelmed, principally by the rising toll of the Social Security tax. Six times since 1981, the Social Security tax rate has increased, so that it now takes in 7.65 percent of the family's earnings, up from 6.1 percent in 1980. The level or earnings to which this tax is applied has also been ratcheted up under a scheme of automatic adjustments. The combination of higher rates and a broader base has enlarged the bite that Social Security takes out of the typical family's income to \$4,075 in 1991.

Combined, income and Social Security taxes will absorb 19.8 percent of family income in 1991, down only slightly from the 1981 peak of 20.3 percent. The federal income tax, which claimed 13.7 percent of the family's total income in 1980, fell to a low of 11.8 percent in 1985 before rising to its present 12.2 percent level. The family achieved its most significant gains in the mid-1980s when real income rose an average of \$768 per year between 1982 and 1987.

INDIRECT FEDERAL TAXES

Individual income tax and Social Security "contributions" are direct federal taxes which appear as withheld income on the typical American worker's paycheck. But they are only part of the federal tax take. Numer-

ous federal taxes are indirect; that it, government imposes them directly on industry. This can mean lower wages for workers, higher prices for consumers, and lower returns for investors. Some examples of these indirect taxes are the employer's share of Social Security taxes; excise taxes on products and services such as gasoline, liquor, tobacco, and telephone use; and miscellaneous taxes. All together, these claim a significant portion of the typical family's earnings.

Last year's budget agreement, the Omnibus Budget Reconciliation Act of 1990, increased many of these indirect taxes, notably on gasoline (9 to 14 cents per gallon), cigarettes (16 to 20 cents per pack), beer (16 to 32 cents per 6-pack), wine (3 to 21 cents per bottle), and the telephone excise tax (permanently 3 percent). While the amount of these taxes varies with each family's income and consumption patterns, the median family examined here will pay an estimated \$4,350 in indirect federal taxes in 1991. That adds up to a record-high 8.2 percent of the family's 1991 earnings.

The upswing in inflation is another reason for the decline in the typical family's purchasing power in 1991. Inflation, which stood at 13.5 percent in 1980, declined fairly steadily to a low of 1.9 percent in 1986, giving family income a chance to grow in real terms. Inflation has accelerated since 1986, however, and it is estimated at 3.6 percent for 1991. Inflation was relatively low during the first half of 1991, but the economic slowdown that began in the last quarter of 1990 has severely reduced personal income growth for the average American family.

HOW DOES THE FAMILY SPEND WHAT IS LEFT?

The family's first obligation after federal taxes is to state and local governments, which will collect an estimated \$5,273 in taxes, making government's total cost to the average family a hefty 37.9 percent of all income, by far the largest item in the family budget. After paying all federal, state and local taxes, from its \$53,265 annual earnings, the family is left with \$33,074 in disposable income to spend or save.

The family spends the bulk of its disposable income on four items: housing and household operations—16.7 percent; food and tobacco—11.4 percent; health care—9.1 percent; and transportation—7.5 percent. After taxes and these expenses, less than 18 percent of the family's income is left for such items as clothing, recreation and savings.

WHAT IS THE OUTLOOK FOR THE FAMILY?

Despite the typical family's record-high tax payments in 1991, persistent federal deficits of over \$300 billion will keep the pressure on to increase federal tax revenues. Sharp tax increases recently enacted in many states will continue to tap the family's disposable income over the next several years. These tax increase pressures, along with the upswing in inflation and slower income growth, do not bode well for the American family's purchasing power in the coming years.

And what do we debate on the floor of this House? New programs, expanding programs. This week alone we reauthorized an old program, a very effective one, I must say, the Job Training Partnership Act. Some, many, I should say, support that program because it does put people into new situations, it trains them for new kinds of jobs and gets them back into the job force. But in that bill we are encouraged to in-

crease spending for this program over 10 percent a year.

We are continuing to increase spending, driving the deficit ever higher, putting more pressure on to go back into a budget summit, create another monster such as was created last year, increasing taxes again.

When is the majority going to talk about the American family? When is the majority going to understand that the American family has no money left? They do not have any more money to give to their Government. They barely can get by now.

By this report, 18 percent is all they have to spend on clothes, recreation, and maybe a little on savings. Yet there are very few people saving today.

Now, 18 percent, that is not a whole lot of money. If your State, local, and Federal Government continue to feed at the trough, the American family sooner or later, I hope, is going to have enough. They have had enough in New Jersey. You are seeing every day Americans, just good American people in New Jersey, out in the streets protesting against the government of New Jersey.

□ 1710

Mr. Speaker, we just saw in the last couple of weeks very middle to upper income people, just average, everyday family people, in the streets in Connecticut because they instituted a new income tax in the State of Connecticut. Yet the majority of this House and the majority of the other body cannot even analyze the newspapers that they read and see that the American people are fed up. They have had enough, they have had enough of big government, and they are blaming us for it.

Well, I hope, Mr. Speaker, that the American people and the American family will do a little research and find out who is it, who is doing it to us. It is not the Congress. It is not the House of Representatives. It is not the other body. It is the people that control the House of Representatives and control the other body that is doing it to us.

Mr. Speaker, sooner or later the American people are going to understand that, and they are going to understand that they have been bled dry, and they have no more to give, and they are going to understand that the next round of tax increases from the local, State, and Federal governments are going to be taking clothes off the backs of their children. Maybe they will start getting out in the streets, maybe, finally, they will start going to the voting booth, and maybe, just maybe, they will take their government back and put people in that will stand up and say, "No, we can't have these special little groups having their own little programs. The American people are more important than a little program. We have to live within our means. We have to have a government

that believes more in the individuality of its people, that believes more in the American family than it believes in the size of the government."

Maybe the American people, Mr. Speaker, will take that government back.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. FORD of Michigan (at the request of Mr. GEPHARDT), for today, on account of medical reasons.

Mr. SMITH of Florida (at the request of Mr. GEPHARDT), for today, on account of illness in family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mrs. BENTLEY) to revise and extend his remarks and include extraneous material:)

Mr. ROHRBACHER, for 5 minutes, today.

(The following Members (at the request of Mrs. COLLINS of Michigan) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. STARK, for 5 minutes, today.

Mr. PANETTA, for 5 minutes, today.

Mr. MONTGOMERY, for 5 minutes, today.

Mr. OBEY, for 60 minutes each day, on October 10, 16, 17, 22, 23, 24, 25, 28, 29, and 30.

Mr. McDERMOTT, for 60 minutes, on October 30.

(The following Members (at the request of Mr. DORNAN) to revise and extend their remarks and include extraneous material:)

Mr. DORNAN of California, for 60 minutes each day, on October 15, 16, 17, 22, 23, 24, 29, 30, and 31, and November 5, 6, 7, 12, 13, and 14.

Mr. GONZALEZ, for 60 minutes, on October 11.

(The following Member (at the request of Mr. DELAY) to revise and extend his remarks and include extraneous material:)

Mr. FAZIO, for 60 minutes, on October 15.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mrs. BENTLEY) and to include extraneous matter:)

Mr. GALLEGLY.

Mr. FIELDS.

Mr. MACTHLEY.

Ms. ROS-LEHTINEN in three instances.

Mr. EMERSON.

Mr. WELDON.

Mr. SUNDQUIST in two instances.

Mr. ARMEY.

Mr. HORTON.

(The following Members (at the request of Mrs. COLLINS) of Michigan and to include extraneous matter:)

Mr. HOYER.

Mr. KOSTMAYER.

Mr. HAMILTON.

Mr. DARDEN.

Mr. MILLER of California.

Mr. BROWN of California.

Mr. ATKINS.

Mr. LEHMAN of Florida.

Mr. NATCHER.

Mr. VENTO.

Mr. ANDREWS of New Jersey in two instances.

Mr. DYMALLY.

Mr. DONNELLY.

Mr. RANGEL.

Mr. DYMALLY.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill and joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 2519. An act making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, commissions, corporations, and offices for the fiscal year ending September 30, 1992, and for other purposes, and

H.J. Res. 230. Joint resolution designating October 16, 1991, and October 16, 1992, each as "World Food Day."

ADJOURNMENT

Mr. DELAY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 14 minutes p.m.), the House adjourned until tomorrow, Friday, October 11, 1991, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2193. A letter from the Secretary of Labor, transmitting the annual report on the administration of the Black Lung Benefits Act for 1991, pursuant to 30 U.S.C. 936(b); to the Committee on Education and Labor.

2194. A letter from the Farm Credit Bank of St. Louis, transmitting the Sixth Farm Credit District Retirement Plan for the year ending December 31, 1990, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

2195. A letter from the Director, Office of Management and Budget, transmitting a report entitled, "Statistical Programs of the

United States Government, Fiscal Year 1992"; to the Committee on Government Operations.

2196. A letter from the Secretary, Department of the Interior, transmitting the 1990 Section 8 Report on National Historic and Natural Landmarks that have been damaged or to which damage to their integrity is anticipated, pursuant to 16 U.S.C. 1a-5(a); to the Committee on Interior and Insular Affairs.

2197. A letter from the Administrator, Environmental Protection Agency, transmitting the final report of the State revolving fund, pursuant to 33 U.S.C. 1375; to the Committee on Public Works and Transportation.

2198. A letter from the Secretary of Labor, transmitting the sixth report on trade and employment effects of the Caribbean Basin Economic Recovery Act, pursuant to 19 U.S.C. 2705; to the Committee on Ways and Means.

2199. A letter from the Director, Office of Environmental Restoration and Waste Management, Department of Energy, transmitting notification that the report which summarizes the progress of States and compacts are making to meet the milestones contained in Public Law 99-240 section 7(d) would be submitted on or before November 15, 1991, pursuant to 42 U.S.C. 2021g(b); jointly, to the Committees on Energy and Commerce and Interior and Insular Affairs.

2200. A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to amend section 2 of the act of July 31, 1947 (61 Stat. 681); jointly, to the Committees on Interior and Insular Affairs and Agriculture.

2201. A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to provide additional authority for transfer of excess wild free-roaming horses, and for other purposes; jointly, to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DE LA GARZA: Committee on Agriculture. H.R. 35. A bill to designate certain lands in the State of North Carolina as wilderness, and for other purposes; with an amendment (Rept. 102-248 Pt. 1). Ordered to be printed.

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 2105. A bill to designate the area in Calhoun County, Texas, known as Rancho La Bahia, as the "Myrtle Foester Whitmire National Wildlife Refuge"; with amendments (Rept. 102-249). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. GONZALEZ:

H.R. 3542. A bill to amend the Real Estate Settlement Procedures Act of 1974 to reflect changes in the mortgage servicing industry and the availability of improved technology to escrow agents, and for other purposes; to the Committees on Banking, Finance and Urban Affairs.

By Mr. WHITTEN:

H.R. 3543. A bill making dire emergency supplemental appropriations and transfers for relief from the effects of natural disasters, for other urgent needs, and for incremental costs of "Operation Desert Shield/Desert Storm" for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

By Mr. WHITTEN (for himself and Mr. MURTHA):

H.R. 3544. A bill making appropriations to meet our economic problems coming from changing conditions with essential productive jobs for the fiscal year ending September 30, 1992, and for other purposes; to the Committee on Appropriations.

By Mr. BRYANT:

H.R. 3545. A bill to amend the Federal Food, Drug, and Cosmetic Act respecting bottled water, and for other purposes; to the Committee on Energy and Commerce.

By Mr. COLEMAN of Missouri (for himself, Mr. ROBERTS, Mr. ENGLISH, Mr. EMERSON, Mr. HERGER, Mr. WALSH, Mr. JONES of North Carolina, Mr. MARLENEE, Mr. GUNDERSON, Mr. CAMP, Mr. HATCHER, Mr. BOEHNER, and Mr. JOHNSON of South Dakota):

H.R. 3546. A bill to enhance the ability of the United States to provide support to emerging democracies in their transition to agricultural economies based upon free enterprise elements; jointly, to the Committees on Agriculture and Foreign Affairs.

By Mr. McCLOSKEY:

H.R. 3547. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to prohibit the use of solid waste as fuel for any incinerator being used for the destruction of polychlorinated biphenyls or other hazardous substances and to require the Environmental Protection Agency to review and research methods of disposal and storage of polychlorinated biphenyls; jointly, to the Committees on Energy and Commerce and Science, Space, and Technology.

By Mrs. MINK (for herself, Mrs. BOXER, Mr. REED, Mr. SERRANO, Mr. WASHINGTON, Mr. HAYES of Illinois, Mr. PERKINS, Mr. OWENS of New York, Mr. MILLER of California, Mr. MARTINEZ, Mr. WILLIAMS, Mr. GAYDOS, Mr. JEFFERSON, Mr. PAYNE of New Jersey, Mr. ABERCROMBIE, Ms. PELOSI, Mr. DELLUMS, Mr. SANDERS, Mr. WEISS, Mrs. COLLINS of Michigan, Mr. CONYERS, Mr. DYMALLY, Mr. MFUME, Mr. CLAY, Mr. EDWARDS of California, and Mrs. UNSOELD):

H.R. 3548. A bill to improve the quality of education by providing incentive grants and by certain other methods; to the Committee on Education and Labor.

By Mr. PETERSON of Minnesota:

H.R. 3549. A bill relating to the monitoring of the domestic uses made of certain foreign grain after importation; to the Committee on Ways and Means.

By Mr. SARPALIUS:

H.R. 3550. A bill to prohibit the Secretary of Health and Human Services from changing current regulations respecting use of voluntary contributions, provider-paid taxes, and intergovernmental transfers toward State share of Medicaid expenditures; to the Committee on Energy and Commerce.

By Mr. STARK:

H.R. 3551. A bill to amend the Internal Revenue Code of 1986, to extend the credit for clinical testing expenses for certain drugs for rare diseases or conditions, to impose a windfall profit tax on such drugs if they be-

come excessively profitable, and for other purposes; to the Committee on Ways and Means.

By Mr. VENTO (for himself, Mr. SIKORSKI, Mr. GILMAN, and Mr. RITTER):

H.R. 3552. A bill to expedite the naturalization of aliens who served with special guerrilla units in Laos; to the Committee on the Judiciary.

By Mr. ROYBAL:

H. Con. Res. 219. Concurrent resolution making corrections in the enrollment of H.R. 2622; considered and agreed to.

By Mr. RANGEL:

H. Con. Res. 220. Concurrent resolution condemning the unconstitutional seizure of power by elements of the Haitian military and consequent violence, and calling on the Attorney General to suspend the forced return of Haitian nationals in the United States during the crisis in Haiti; jointly, to the Committees on Foreign Affairs, the Judiciary, and Merchant Marine and Fisheries.

By Mr. BILLRAKIS:

H. Res. 244. Resolution expressing the sense of the House of Representatives regarding the use of the ambulance currently maintained at the Capitol solely for Members of the Congress; to the Committee on House Administration.

By Mr. SANTORUM (for himself, Mr. ESPY, Mr. RAVENEL, Mr. JEFFERSON, Mr. HOBSON, Mr. NUSSLE, Mr. NEAL of Massachusetts, and Mr. OWENS of New York):

H. Res. 245. Resolution requiring the Clerk of the House to take such action as may be necessary to ensure that stationery used in the House of Representatives is made from recycled paper; to the Committee on House Administration.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

279. By the SPEAKER: Memorial of the Legislature of the State of California, relative to the Antarctic Treaty and preservation of the Antarctic region; to the Committee on Foreign Affairs.

280. Also, memorial of the Legislature of the State of California, relative to Lithuania; to the Committee on Foreign Affairs.

281. Also, memorial of the Legislature of the State of California, relative to National Missing Children's Day; to the Committee on Post Office and Civil Service.

282. Also, memorial of the Legislature of the State of California, relative to the war against Iraq; to the Committee on Veterans' Affairs.

283. Also, memorial of the Legislature of the State of California, relative to hazardous liquid pipeline regulations; jointly, to the Committees on Energy and Commerce and Public Works and Transportation.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 53: Mr. KLECZKA, Mr. CONDIT, Mr. RINALDO, Mr. BROWN, and Mr. INHOFE.

H.R. 123: Mr. BUNNING, Mr. PAYNE of Virginia, and Mr. TAYLOR of North Carolina.

H.R. 303: Mr. WELDON, Mr. TRAFICANT, Mr. ATKINS, Mr. ANDREWS of Maine, Mr. WISE, and Mr. HERTEL.

H.R. 430: Mr. THOMAS of Georgia.

H.R. 431: Mr. OWENS of Utah, Mr. PETERSON of Minnesota, Mr. BARTON of Texas, Mr. CHAPMAN, Mr. KILDEE, Mr. HOBSON, and Mr. LIPINSKI.
 H.R. 670: Mr. JAMES and Mr. TALLON.
 H.R. 709: Mr. CUNNINGHAM, Mr. SANDERS, Mr. SCHIFF, Mr. McMILLEN of Maryland, and Mr. PETERSON of Florida.
 H.R. 730: Mr. JOHNSON of South Dakota.
 H.R. 784: Mr. RIDGE, Mr. SPRATT, Mr. ROBERTS, Mr. CRAMER, and Ms. KAPTUR.
 H.R. 951: Mr. MAVROULES, Mr. WALSH, Mr. RAMSTAD, Mr. DORNAN of California, and Mr. OXLEY.
 H.R. 1240: Mr. KOLTER.
 H.R. 1278: Mr. BUSTAMANTE, Mr. IRELAND, Mr. CAMP, and Mr. OWENS of Utah.
 H.R. 1300: Mr. BERMAN.
 H.R. 1389: Mr. MANTON.
 H.R. 1472: Mr. MFUME and Mr. SIKORSKI.
 H.R. 1495: Mr. LEWIS of Georgia.
 H.R. 1531: Mr. TAUZIN, Mr. JEFFERSON, and Mr. EMERSON.
 H.R. 1584: Mr. SMITH of Oregon.
 H.R. 1633: Ms. WATERS, Mr. KLECZKA, Mr. MORAN, Mr. PETERSON of Minnesota, Mr. SABO, and Mr. DREIER of California.
 H.R. 1655: Mr. CHAPMAN, Mr. TOWNS, and Mr. LIPINSKI.
 H.R. 1721: Mr. JOHNSON of South Dakota.
 H.R. 1730: Mr. PERKINS, Mr. SHAYS, Mr. VIS-CLOSKY, and Mr. JONTZ.
 H.R. 1751: Mr. TALLON.
 H.R. 1771: Mr. PAXON, Mr. SKAGGS, and Mr. STENHOLM.
 H.R. 1889: Mr. SPRATT and Mr. BOEHNER.
 H.R. 1916: Mr. YATES, Mr. SANDERS, and Mr. TOWNS.
 H.R. 2059: Mr. ATKINS and Mr. EVANS.
 H.R. 2164: Mr. SWETT.
 H.R. 2257: Mr. HERGER.
 H.R. 2293: Mr. DE LUGO and Mr. FAWELL.
 H.R. 2385: Mr. KOSTMAYER.
 H.R. 2401: Mr. LANCASTER, Mr. DEFazio, Mr. NUSSLE, Mr. NAGLE, and Mr. CAMPBELL of Colorado.
 H.R. 2561: Mr. ENGEL.
 H.R. 2598: Mr. EMERSON, Mr. CHAPMAN, Mr. FISH, Mr. McCANDLESS, Mr. RAY, Mr. KYL, and Mr. EDWARDS of Oklahoma.
 H.R. 2600: Mr. WEBER, Mr. OBERSTAR, Mr. HOCHBRUECKNER, and Mr. SIKORSKI.
 H.R. 2763: Mr. KOPETSKI and Mr. JOHNSON of South Dakota.
 H.R. 2863: Mr. SCHIFF.
 H.R. 2870: Mr. GALLEGLY, Mr. PAXON, Mr. LEWIS of Florida, Mr. MOORHEAD, Mr. EWING, Mr. SOLOMON, and Mr. McMILLAN of North Carolina.
 H.R. 2872: Mr. FUSTER and Ms. ROS-LEHTINEN.
 H.R. 2889: Mr. KOSTMAYER, Mr. VENTO, and Mr. LAFALCE.
 H.R. 2898: Mr. GAYDOS.
 H.R. 2902: Mr. DOOLITTLE.
 H.R. 2903: Mr. DOOLITTLE.
 H.R. 2904: Mr. DOOLITTLE.
 H.R. 2912: Mrs. MINK, Mr. JEFFERSON, Mr. DE LUGO, Mr. FOGLIETTA, Mr. MAZZOLI, and Mr. TOWNS.
 H.R. 2958: Mr. SCHIFF.
 H.R. 3002: Mr. STUDDS.
 H.R. 3164: Mr. COMBEST.
 H.R. 3212: Mr. HANCOCK.
 H.R. 3250: Mr. GEPHARDT and Mr. BURTON of Indiana.
 H.R. 3285: Ms. KAPTUR, Mrs. MORELLA, and Mr. TALLON.
 H.R. 3293: Mr. JOHNSON of South Dakota, Mr. GUARINI, and Mr. FUSTER.

H.R. 3312: Mr. BREWSTER, Mr. FASCELL, Mr. GILCHREST, and Mr. PETERSON of Florida.
 H.R. 3373: Mr. WILLIAMS, Ms. SNOWE, Mr. RAHALL, Mr. MCGRATH, Mr. WALSH, Mr. DURBIN, Mr. MACHTLEY and Mr. LEWIS of Florida.
 H.R. 3376: Mr. HANCOCK.
 H.R. 3406: Mr. STARK.
 H.R. 3463: Mr. TOWNS, Mr. McMILLAN of North Carolina, Mr. OXLEY, Mr. HOBSON, and Mr. RAMSTAD.
 H.R. 3511: Mr. DELLUMS, Mr. FOGLIETTA, Mr. DURBIN, Mr. RAHALL, Mr. HOCHBRUECKNER, Mrs. MORELLA, Mr. KOLTER, and Mr. EVANS.
 H.R. 3519: Mr. YATRON.
 H.J. Res. 177: Mr. WALSH, Mr. SAWYER, Mr. DICKINSON, and Mr. McNULTY.
 H.J. Res. 228: Mr. DONNELLY, Mr. NEAL of North Carolina, Mr. COSTELLO, Mr. WILSON, Mr. FROST, Mr. LENT, Mr. ROE, Mr. GEREN of Texas, Mr. SMITH of Florida, Mr. PRICE, Mr. MATSUI, Mr. MOODY, Mr. SPENCE, Mr. YOUNG of Alaska, Mr. LAFALCE, Mr. PAYNE of New Jersey, Mr. SKEEN, Mr. TALLON, Mr. CLINGER, Mrs. BOXER, Mr. LEHMAN of Florida, Mr. BENNETT, Mr. VALENTINE, Mr. CARPER, Mr. RHODES, Mr. FRANK of Massachusetts, Mr. REED, Mr. KOSTMAYER, Mr. MOAKLEY, Mr. KENNEDY, Mr. GOODLING, Ms. OAKAR, Mr. HAYES of Louisiana, Mrs. UNSOELD, Mr. HAYES of Illinois, Mr. HAMILTON, Mr. BURTON of Indiana, Mr. JACOBS, Mr. MILLER of Ohio, Mr. TRAFICANT, Mr. GEKAS, Mr. SANGMEISTER, Mr. PERKINS, Mr. ROTH, Mr. WEISS, Mr. CARDIN, Mr. COBLE, Mr. PORTER, Mr. HOBSON, Mr. RUSSO, Mr. DIXON, and Mr. ROYBAL.
 H.J. Res. 242: Mr. DEFazio, Mr. BACCHUS, Mr. ATKINS, Mr. CARPER, Mr. DOWNEY, Mr. RITTER, Mr. ORTIZ, Mr. OXLEY, Mr. MCCOLLUM, Mr. FRANKS of Connecticut, Mr. GRANDY, Mr. JOHNSON of South Dakota, Mr. HOYER, and Mr. LEACH.
 H.J. Res. 248: Mr. SPENCE, Mr. KOLTER, Mr. ALLARD, Mr. FRANKS of Connecticut, and Mr. EWING.
 H.J. Res. 290: Mr. GLICKMAN and Mr. EWING.
 H.J. Res. 293: Mr. SANDERS, Mr. PETERSON of Florida, Mr. LAUGHLIN, Mr. DINGELL, Mr. LEWIS of Florida, Mr. ZIMMER, Mr. DURBIN, and Mr. LAFALCE.
 H.J. Res. 312: Mr. FROST, Mr. LAGOMARSINO, Mr. NAGLE, Mr. MCEWEN, Mr. MFUME, Mrs. MORELLA, Mr. TALLON, Mr. GRANDY, Mr. WOLF, Mr. LEACH, Mr. MINETA, Mr. MRAZEK, Mr. SERRANO, Mr. FRANKS of Connecticut, Mr. EMERSON, Mr. STALLINGS, Mr. FALCOMAVAEGA, Mr. KOLTER, Mr. FISH, Mr. MORAN, Mr. DORGAN of North Dakota, Mr. ROTH, Mr. IRELAND, Mr. BROWDER, Mr. ATKINS, Mr. GALLO, Mr. DICKS, Mr. CRAMER, Mr. DE LA GARZA, Mr. TRAXLER, Mr. DARDEN, Mr. BRUCE, Mr. CHAPMAN, and Mr. McNULTY.
 H.J. Res. 327: Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. ALEXANDER, Mr. ANDERSON, Mr. ANDREWS of Texas, Mr. ANDREWS of New Jersey, Mr. BACCHUS, Mr. BAKER, Mr. BATEMAN, Mr. BENNETT, Mr. BEVILL, Mr. BILIRAKIS, Mr. BONIOR, Mr. BORSKI, Mr. BREWSTER, Mr. BROOKS, Mr. BROWDER, Mr. BRUCE, Mr. BRYANT, Mr. BUSTAMANTE, Mrs. BYRON, Mr. CARPER, Mr. CHAPMAN, Mr. CLEMENT, Mr. CLINGER, Mr. COLEMAN of Texas, Ms. COLLINS of Michigan, Mr. CONDIT, Mr. COSTELLO, Mr. CRANE, Mr. DAVIS, Mr. DE LA GARZA, Ms. DELAURO, Mr. DICKINSON, Mr. DINGELL, Mr. ERDREICH, Mr. ESPY, Mr. FALCOMAVAEGA, Mr. FASCELL, Mr. FIELDS, Mr. FROST, Mr. GEPHARDT, Mr. GEREN of Texas, Mr. GILCHREST,

Mr. GILMAN, Mr. GLICKMAN, Mr. GONZALEZ, Mr. GUARINI, Mr. HALL of Texas, Mr. HARRIS, Mr. HATCHER, Mr. HAYES of Illinois, Mr. HAYES of Louisiana, Mr. HEFNER, Mr. HOAGLAND, Mr. HOBSON, Mr. HOCHBRUECKNER, Ms. HORN, Mr. HOYER, Mr. HUBBARD, Mr. HUCKABY, Mr. HUGHES, Mr. HUTTO, Mr. IRELAND, Mr. JEFFERSON, Mr. JENKINS, Mr. JONES of North Carolina, Mr. JONTZ, Ms. KAPTUR, Mrs. KENNELLY, Mr. LAROCO, Mr. LEHMAN of Florida, Mr. LEWIS of Georgia, Mr. LEWIS of Florida, Mr. LIVINGSTON, Ms. LONG, Mr. MCCOLLUM, Mr. MCGRATH, Mr. McMILLEN of Maryland, Mr. MACHTLEY, Mr. MFUME, Mr. MINETA, Ms. MOLINARI, Mr. MONTGOMERY, Mr. MORAN, Mr. NAGLE, Mr. NEAL of North Carolina, Ms. NORTON, Mr. OBERSTAR, Mr. ORTIZ, Mr. PACKARD, Mr. PALLONE, Mr. PARKER, Mr. PASTOR, Mr. PAYNE of Virginia, Ms. PELOSI, Mr. PETERSON of Florida, Mr. PICKETT, Mr. PICKLE, Mr. PRICE, Mr. RAHALL, Mr. RAVENEL, Mr. RHODES, Mr. ROE, Mr. ROEMER, Mr. RUSSO, Mr. SARPALIUS, Mr. SAVAGE, Mr. SAXTON, Mr. SHAW, Mr. SISISKY, Mr. SMITH of Texas, Mr. STALLINGS, Mr. STENHOLM, Mr. STUDDS, Mr. SWETT, Mr. TALLON, Mr. TANNER, Mr. TAUZIN, Mr. TAYLOR of Mississippi, Mr. THOMAS of Georgia, Mr. TOWNS, Mrs. UNSOELD, Mr. VALENTINE, Mr. VOLKMER, Mr. WASHINGTON, Ms. WATERS, Mr. WHEAT, Mr. WHITTEN, Mr. WILSON, Mr. WOLPE, Mr. YOUNG of Florida, and Mr. YOUNG of Alaska.

H.J. Res. 343: Mr. BEVILL, Mr. CAMPBELL of Colorado, Mr. DELLUMS, Mr. ERDREICH, Mr. FALCOMAVAEGA, Mr. FAZIO, Mr. HAYES of Illinois, Ms. KAPTUR, Mr. LIPINSKI, Mr. LIVINGSTON, Mr. McNULTY, Mrs. MEYERS of Kansas, Mr. OWENS of New York, Mr. PASTOR, Mr. QUILLEN, Mr. RAHALL, Mr. SAWYER, Mr. SCHIFF, Mr. SKEEN, Mr. SPRATT, Mr. TAUZIN, Mr. THOMAS of Georgia, and Mr. WEISS.

H. Con. Res. 197: Mr. SMITH of New Jersey.

H. Con. Res. 210: Mr. SARPALIUS.

H. Con. Res. 215: Mr. RAHALL, Mr. MOLLOHAN, Mr. WALSH, Mr. RANGEL, Mr. JONTZ, Mr. JEFFERSON, Mr. SIKORSKI, Mr. BILIRAKIS, Mr. MCEWEN, Mr. PENNY, Mr. KOLTER, Mr. FOGLIETTA, Mr. TOWNS, and Ms. KAPTUR.

H. Res. 17: Mr. LIVINGSTON, Mr. SOLOMON, Mr. ZELIFF, Mr. HANSEN, Mr. BURTON of Indiana, Mr. BALLENGER, Mr. EMERSON, Mr. McCANDLESS, Mr. RIGGS, Mr. FIELDS, Mr. JOHNSON of Texas, Mr. DELAY, Mr. WALKER, Mr. ARMEY, Mr. ROHRBACHER, Mr. GINGRICH, and Mr. COBLE.

H. Res. 222: Mr. SANGMEISTER and Mr. LAFALCE.

H. Res. 237: Mr. ECKART, Mr. RITTER, Mr. GUARINI, Mr. FALCOMAVAEGA, Mr. TOWNS, Mr. TRAFICANT, Mr. JEFFERSON, Mr. SMITH of Florida, Mr. PANETTA, Mr. KOLTER, Mr. LIPINSKI, and Mr. FUSTER.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 1028: Ms. ROS-LEHTINEN.

H.R. 2797: Mr. DORNAN of California.

H. Res. 194: Mr. HAMMERSCHMIDT and Mr. ROGERS.