

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 to 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	Gallegly	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	Molinaro
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	Stump	Zeliff
Saxton	Sundquist	Zimmer
Schaefer	Tallon	
Schiff	Tanner	

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

PART A—DECLARATION OF POLICY

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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-SHIIH 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 salaried 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 salaried men, 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, Nissin 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	Mitsukoishi				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, Kigyo 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. Kasal 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 pro rated 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 "mooned 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 renegeing 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. BILLIRAKIS:

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.

EXTENSIONS OF REMARKS

REAL ESTATE AND THE ENVIRONMENT

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. ANDREWS of New Jersey. Mr. Speaker, I would like to insert the following article from the New Jersey Law Journal entitled "Real Estate and the Environment" into the CONGRESSIONAL RECORD.

REAL ESTATE AND THE ENVIRONMENT—FOR THOSE WHO'D RATHER RESOLVE THAN LITIGATE

(By Irvin E. Richter)

The 1980s brought a massive wave of new legislation and regulations along with the development of common-law doctrines, all designed to protect the environment. These new laws have broadened, and often confused, existing areas of legal responsibility.

As a result, the 1990s are seeing an onslaught of increasingly complex environmental cases which resemble antitrust, construction contract and other complex commercial litigation that have plagued the courts for years. Further complicating matters, enforcement agencies are trying to cope with a myriad of dilemmas and a lack of resources in keeping up with the new regulations.

The New Jersey Supreme Court acknowledged the need for alternatives to traditional drawn-out and costly means of resolving environmental disputes when its March 1990 Committee Report on Environmental Litigation recommended "the extensive utilization of alternative dispute resolution techniques (ADR) in complex environmental litigation."

The Environmental Protection Agency, which has maintained a vigorous judicial and administrative enforcement program, has traditionally settled its enforcement cases through negotiations solely between representatives of the government and the alleged violator. In the last few years, though, the EPA has begun to endorse ADR techniques. According to the EPA, these techniques have the potential for resolving some of its cases more efficiently and just as effectively as those used in traditional enforcement. What's more, ADR can also be incorporated into judicial consent decrees and consent agreements ordered by administrative law judges to address future disputes.

In late 1990, President Bush signed H.R. 2497 (now P.L. 101-552) requiring every government agency to adopt a policy which deals with the use of alternative methods of resolving disputes. That law amends the Contract Disputes Act to allow a contractor and a contracting officer to use any ADR technique authorized by the statute and other mutually agreeable procedures for resolving claims.

In recent years, ADR techniques have proved successful in resolving complex issues in the commercial and construction arenas, and are increasingly being implemented to resolve selected types of environmental disputes.

ADR TECHNIQUES

The term "ADR" encompasses a variety of techniques ranging from negotiation to summary jury trials. These techniques range from the simple, noncoercive, less adversarial and informal processes (for those disputing parties who wish to maintain a continuing relationship after resolving the dispute) to a minitrial or summary jury trial which has some of the aspects of traditional litigation.

Negotiation is the simplest form of ADR. Negotiations are voluntary and informal and do not require the parties to enter into the judicial system. Any negotiated settlement should, however, be reduced to a written contract which can be enforced within the judicial system.

Among the advantages of negotiation are its flexibility, economy and relative speed of dispute resolution as compared to litigation. One major disadvantage is its dependence on good-faith bargaining, and on the underlying assumption that both sides want a prompt, negotiated settlement. Negotiation also runs the risk that considerable time and effort may be expended without reaching a settlement.

Mediation, another form of ADR, is best viewed as an extension of the direct negotiation process begun by the parties. It may be a voluntary activity undertaken by the parties, except where court-ordered mediation is utilized as a result of entering into a particular litigation forum.

Mediation is most appropriate for disputes where the parties anticipate or have already reached an impasse based on such considerations as poor communication, personality conflicts, multiple party involvement and inflexible negotiating stances. It is also useful in cases where all necessary parties are not before the court, but are willing to participate in the settlement process.

An aid to enable the disputing parties to reach a successful negotiation, mediation involves the use of a neutral third person, as mediator, to help guide the disputants to resolve the contested issues. The mediator first attempts to determine the true interest and intent behind the disputing parties' positions, and then aids the parties in reaching an understanding of each others' positions so that the disputants may come to a voluntary settlement. The mediator does not make a decision; he is a facilitator and attempts to abstain from taking positions on substantive points, except when necessary to guide the participants.

Mediation is often the preferred alternative when the parties have a continuing relationship that they wish to maintain. It also has many of the advantages of negotiation, providing the services of an objective third party with special expertise whose role is agreed upon by all parties. Mediation also helps to identify issues that the parties may overlook, avoid misunderstandings and clarify priorities. The success of mediation, however, depends heavily on the skills of the mediator. In addition, there is always the risk of no settlement despite a heavy investment in time. Due to the complexity of environmental disputes, a move is afoot to appoint technically skilled firms as mediators, with

the firm providing both the leader of the mediation team and the expert technical skills to support them.

Adjudication, the next major step along the ADR continuum, is a process where the parties present proofs and evidence to a neutral third-party judge who will then render a binding decision on an objective basis. This technique is also known as "private judging." Adjudication is voluntarily entered into by the disputing parties and is a private action unless judicial enforcement or review is sought after the decision is issued. The adjudication decision is binding but subject to appeal.

There are private organizations throughout the United States that provide adjudication services for a fee. The parties involved in the dispute will select, by agreement, the adjudication forum and the individual adjudicator.

The advantages of adjudication is that a law-trained third party will render an objective decision based on the facts and the legal arguments presented; however, the adjudicator is not bound to follow the legal principles of any jurisdiction and may apply equity to the degree required to provide justice. The decision is sometimes supported by findings of facts and conclusions of law.

Adjudication has various disadvantages, however. It is more expensive and more adversarial than mediation; the parties are bound to the contracted rules of evidence and discovery; and the outcome may be different than that received in a court system. (Anybody displeased with the result may attempt to appeal, though the basis for the appeal is limited by the remedies provided in the adjudication contract entered into with the adjudication forum.)

Arbitration, another form of ADR, can be voluntary or involuntary. Pretrial mandatory arbitration may be ordered by the court, in some jurisdictions, after a complaint is filed. Voluntary arbitration is a contractual remedy. Disputing parties cannot be forced to arbitrate. The contract that is the subject of dispute between the litigants must have included an arbitration clause, or parties may consent to enter into arbitration after the dispute arises. Because arbitration is a contractual remedy only disputes and remedies that the parties agreed to submit to arbitration can be considered by the arbitrator.

Arbitration is most appropriate in resolving cases that do not merit the resources required to generate and process a civil trial. This method may also help resolve technical disputes, which are usually submitted to the courts or administrative law judges, who lack subject-matter expertise. The arbitrator sits as a private judge to listen to the parties' positions and renders an award that is binding and enforceable. The parties typically elect to choose a single arbitrator or a three-member panel of arbitrators to hear the case. Jointly selected by the individual parties, arbitrators are generally professionals familiar with the types of problems in dispute and should thus be able to settle the dispute impartially.

Arbitration offers the advantage of finality of decision, since the scope of judicial review

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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

of the arbitration award is very narrow. Courts have adopted a policy of judicial non-interference into the arbitrator's decision. Arbitration, however, tends to be more complex and time-consuming than negotiation.

Arbitration, however, can be a very frustrating process, with postponed hearings, contract clauses disregarded and rules of evidence inconsistent. Although the process will usually begin more promptly, complex cases can often take years to complete, while trials will take longer to reach but generally continue uninterrupted until completion.

Minitrial, another alternative to litigation, is a voluntary, private process entered into by the parties in order to reach a negotiated settlement. In a minitrial, the opposing parties present their cases in a summary form before a panel of designated representatives of each of the opposing parties. The designated representatives are typically senior corporate officers who have the authority to settle the dispute. In addition, an independent and impartial third-party adviser, selected by the opposing parties, is present to discuss the settlement prospects after the formal presentation of the summary of proofs and arguments. The independent third-party adviser, a specialist in the subject areas of the disputes, will offer non-binding conclusions about the possible outcome of the case if it were to be litigated and may assist in negotiations in the same manner as a mediator.

Minitrials are less formal than traditional litigation or adjudication, allowing parties to set the evidentiary rules. The goal of the minitrial is an acceptable agreement reduced to writing as an enforceable contract. Minitrials are best used in cases involving only a small number of parties. Specifically, minitrials are most useful in disputes where: parties have reached or anticipate reaching a negotiation impasse due to one party's over-estimation (in the view of the other party) of the strength of its position; significant policy issues exist that could benefit from a face-to-face presentation to the decision-makers without the use of a neutral party; technical issues exist, and the decision-makers and a neutral referee have subject-matter expertise; or one or more of the parties lack confidence in the less formal processes of other forms of ADR.

Summary jury trial is yet another ADR technique which also may be voluntary or involuntary. It can be voluntarily entered into by the parties and performed in a manner similar to minitrials. Both sides make their presentation of proofs and arguments before a jury instead of before designated representatives. The impartial jury then prepares non-binding conclusions regarding each of the issues in dispute. A voluntary summary jury trial offers the parties an independent assessment of how a jury would rule if the case went to trial. At the conclusion of the voluntary summary jury trial the disputing parties enter into negotiations. Gloucester County has reported a great deal of success with summary jury trials in complex civil litigation.

Involuntary summary jury trials are typically court-ordered procedures used as a means to facilitate pretrial settlement of legal actions. Procedural rules for involuntary summary jury trials are determined by the court. However, the overall process is typically less formal than adjudication. In the involuntary summary jury trial, the jury decision is an advisory verdict not binding upon the parties. If a successful settlement is not reached, the parties continue with litigation.

DISPUTE-SPECIFIC ADAPTABILITY

The state Supreme Court committee report on environmental litigation has lauded ADR for "its ability to adapt to the specific needs of the dispute." The committee report has also endorsed the concept of the multidoor courthouse, in which courts provide a flexible and diverse range of dispute resolution processes. This concept has been implemented at the Comprehensive Justice Center in Burlington and Hudson counties, where civil suits are evaluated upon receipt by the court personnel who recommend to the presiding judge how to handle each case.

Other benefits of ADR range from accelerating the dispute resolution process, allowing parties to concentrate on specific interests rather than on the strategy of the case, to affording greater confidentiality, to allowing the parties, and their counsel, to focus on the real issues in dispute without expending energy on legal strategy.

ADR can be used to resolve any dispute in general, where the parties are not precluded by statute or government policy from using ADR. For example, in cases under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §9601, potentially responsible parties (PRPs) only have the options of litigating or negotiating (settling) with the EPA. Clients may also wish to use ADR for cases involving novel legal arguments where an adverse decision may encourage other potential claimants to pursue actions against the client. ADR techniques also would be appropriate for use in situations where liability is strict, or has been stipulated, or has been established but where the litigation costs to define damages would be prohibitive.

Though ADR procedures may be introduced into a case at any point in its development or while pending in court, it is generally preferable that ADR be considered in the original contract or as early as possible in the case's progress to avoid the polarizing effect—that often results from long and difficult negotiations and the filing of a lawsuit.

The EPA has identified sample characteristics of cases for which ADR should be used. They are:

Impasse or potential for impasse, which is frequently created by poor communication among negotiators, multiple parties with conflicting interests, complex technical issues, apparent unwillingness of a court to rule on matters which would advance the case toward resolution, or high-visibility concerns making it difficult for parties to settle.

Considerations regarding the level of resources necessary to achieve the desired result (from EPA's standpoint).

Remedies affecting parties not subject to an enforcement action.

ADR offers several advantages in Superfund cases, especially to PRPs faced with huge liabilities who can, with ADR, avoid costs, delays and uncertainty inherent in the judicial process. If a technique can be structured so that PRPs, their consultants and contractors have the functional equivalent of a day in court, the parties are likely to accept the outcome—one which is most likely the same as a time-consuming and costly judicial proceeding. Moreover, a PRP's liability, once trapped in court, cannot be removed from its grasp except by litigation or negotiation.

Alternative dispute resolution is especially relevant where multiple PRPs are involved at any one CERCLA site. Multiple PRPs

have a strong incentive to settle cost allocation among themselves first. Then, as a collective group, they can negotiate a settlement with the EPA. Attempting to get several PRPs to accept costs that each believes they are not responsible for is a difficult task. PRP groups often establish steering committees to negotiate the cost allocation (share of total liability) among the individual PRPs.

However, multiparty negotiations are often unwieldy, with too many factors, too many parties and too much money at risk for a PRP to willingly accept an inflated cost allocation. Mediation and minitrials are applicable to this type of dispute because a neutral adviser is available to provide objective assistance and to guide the parties away from the emotional confrontation and back to the objective facts and alternative remedies available. Several organizations provide special ADR services for PRP disputes, including: the Center for Public Resources in New York and Clean Sites, Inc. in Alexandria, Va.

One non-profit organization has reported that PRP groups initially refused to accept the use of ADR techniques until they realized that it was impossible to get multiple parties to agree on cost allocation shares. PRP groups initially accepted non-binding third-party fact-finding to provide an objective reality check for the complex negotiations. Over time, PRPs realized that this process has been very successful in helping to reach cost allocation agreements. This combination process requires the parties to undertake the mediation process using a neutral nonbinding fact finder to facilitate negotiations. If the negotiations fail to conclude with settlement, the parties enter binding arbitration.

Considering the newness and in many cases, vagueness of environmental regulations, case complexities and the interests and different parties, ADR offers an expedient solution to environmental disputes. In many instances, the alternative is waiting years for a resolution, often with the same result.

STATEMENT OF CONGRESSMAN DON J. PEASE REGARDING HIS NONCANDIDACY IN 1992

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. PEASE. Mr. Speaker, as you are aware, last week I announced my intention to not seek reelection to Congress after my current term ends. I have received many inquiries concerning my reasons, both from my House colleagues and from the public and the press. In response, I am submitting for publication in the CONGRESSIONAL RECORD the statement I released when I initially announced my plans. I hope my colleagues will find it of interest.

STATEMENT OF CONGRESSMAN DON J. PEASE REGARDING HIS NONCANDIDACY IN 1992

I have decided not to seek reelection to the United States Congress in 1992.

My primary reason for leaving Congress is a simple one. After 3 decades of 60-plus hour weeks in public life at local, State and Federal levels, I want to lead a more normal life and pursue a multitude of other interests—interests which had to take a back seat for 30 years.

No specific job or activity beckons me. Indeed, that is the point. I want to be free to pursue interests as diverse as reading, writing, teaching, newspapering, travel, bicycling, mountain hiking, getting friendly with computers, cultivating friendships, and enjoying fully the cultural offerings of my hometown of Oberlin. Just plain loafing also attracts me. And although I have no plans whatever, I expect to remain active politically and I do not rule out elective office at some point in the future after I've had a chance to enjoy life in a slower lane.

Another reason, secondary but still important, is the growing demands on my wife Jeanne's physical and psychic resources posed by her ill and aged mother. Jeanne and I have been teammates in politics for 30 years. It is increasingly hard for her to balance her responsibilities to her mother, to herself, to me, to our home, and to public life. I don't know how she could fit another campaign into her schedule. Jeanne has been wonderfully supportive of me for 30 years; now it's time for me to reciprocate, and I do so gladly.

Those two reasons, one primary and one secondary, are the only ones.

Congress as an institution is not a factor. I believe politics is an honorable profession and that Congress, despite some egregious and well-publicized flaws, serves the American people well. Perhaps all too faithfully, Congress reflects the country.

Job satisfaction is not a factor. As a senior member of the premier House Ways and Means Committee and now a member of the House Budget Committee, I find that every day brings me challenges and opportunities that stimulate me.

My health is not a factor. Since my last heart surgery almost 5 years ago, I have been entirely symptom-free and have passed four Cleveland Clinic annual check-ups with flying colors.

Redistricting is not a factor in my basic decision. I'm confident I could run and win in any district the state legislature could devise.

Essentially, I am leaving Congress at the height of my influence and job satisfaction because I believe 30 years in political life is enough. I have enjoyed every minute of those years even when the work weeks topped 60 hours and hit 70 or even 80. I enjoy work and the work of politics is exciting, fascinating, exhilarating and rewarding.

If I had my life to live over, I would like it the same way. But now it is time to move on and pursue my other interests.

In the meantime, I want to thank my constituents for giving me the privilege of serving them at the municipal level, in Columbus and in Washington, DC. I owe the voters a great debt of gratitude.

I also thank my loyal staff, both in the 13th District and in Washington, for dedicated service to the people of our district and for personal devotion to me. I thank the hundreds of friends and believers who helped me plan, raise funds for and run 32 primary and general election campaigns.

As I review my career in public life, I will recall most proudly that, to use words from a popular ballad, "I did it my way." My way to me meant the use of common sense and good judgment to research and analyze issues objectively. It meant faithfully voting for the interests of my constituents and my country. It meant comporting myself in ways to bring credit, not shame, to the profession of politics. I value my reputation as one of the "straight arrows" of Congress.

Two highlights of my service for me were my heavy involvement in the Tax Reform

Act of 1986 and the Trade Act of 1988. Dozens of other tax and trade matters saw my imprint as did such issues as human rights, unemployment compensation reform, adjustment assistance for laid-off workers, protection of worker rights at home and abroad, child labor law reform, campaign finance reform, and health care access for all Americans.

At home in the 13th District, I'm proud of my help to local officials on dozens of economic development projects such as the Lorain Harbor improvements. I'm proud, too, of the help my staff and I have extended to thousands of ordinary people who had problems with the Federal Government. In many ways such "constituent service" is the most satisfying aspect of a congressman's job.

Much business is unfinished, both at home in Ohio and in the Nation's capital. I pledge to continue my very best efforts until the last day of the 15 months remaining in my term. In particular, I intend to pursue my skeptical oversight of the Bush administration's negotiation for a U.S.-Mexico free trade agreement. I am deeply concerned about the fate of America's working middle class.

The timing of my decision not to seek reelection revolved around two recent events.

One was the observance of September 26 of my 60th birthday, a watershed of sorts.

The other was the announcement on September 30 by Congressman Dennis Eckart that he is not running for reelection in 1992. If I had made my final decision and announced it earlier, it would have invited the dismemberment of the present 13th congressional district by the Ohio legislature. I was determined not to let that happen. With Congressman Eckart's departure from Congress, there is no reason why the state legislature cannot keep the 13th district essentially intact.

As a member of Congress elected prior to 1980, I am technically and legally eligible to convert my leftover campaign funds (\$245,000 at last count) to my own personal use. As I have repeatedly stated over the past several years, I absolutely will not do that. I will announce the disposition of those funds before I leave office. Furthermore, my campaign committee intends to return to the donors all contributions made to my campaign since the beginning of 1991.

Finally, I say again what a joy and pleasure it has been for me to be a "politician" and public servant for the past 30 years. With my confidence high regarding redistricting and reelection prospects, with my health intact and with my current job satisfaction level very high indeed, the temptation even now is to run for another term. But as my distinguished predecessor, Charles A. Mosher, said when he departed Congress, it's better to leave too soon than too late.

A TRIBUTE TO GUS MACHADO

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, I am pleased to recognize my constituent, Mr. Gus Machado, a recipient of the "1991 Top 10 Hispanic Companies in Dade County Award." On October 11, the Greater Miami Chamber of Commerce and the Hispanic Heritage Festival will honor Mr. Machado, an automobile dealer-

ship owner, and other receivers of this prestigious award at the Omni International Hotel in Miami, FL.

Mr. Machado started in the automobile industry almost 26 years ago. Born in Cuba, Mr. Machado came to the United States in 1950, and has had a tremendous enterprise since that time.

Gus Machado Enterprises has been ranked among the top automobile dealerships for several years. In 1984-86, Gus Machado Enterprises was ranked No. 1 among all Hispanic automobile dealers in the Nation. In 1987 and 1988, Mr. Machado's dealership was ranked No. 2, and in 1989 and 1990, Gus Machado Enterprises were ranked No. 4 and No. 5, respectively. Based in Hialeah, FL, Mr. Machado employed over 200 employees throughout 1990 with sales of \$79 million.

Mr. Machado states that he has lived through the recessions of the early 1970's and 1980's, but he claims that the recession of the early 1990's is the worst one he has experienced. Still with his perseverance, and the support and hard work of his team, Gus Machado Enterprises has been able to maintain its head above water and remain among the top 10 Hispanic businesses in Dade County. Mr. Machado states that the economy has taken a tremendous dive, and he feels that we have hit bottom and are on the way to recovery.

I am also honored to pay tribute to the other recipients of the "1991 Top Hispanic Companies in Dade County Awards." I wish to express my warmest congratulations to Bacardi Imports, Sedano's Supermarkets, Capital Bank, Precision Trading Corp., Northwest Meat, American International Container, Eagle Brands, CareFlorida, and Gator Industries.

CHRISTIAN RADIO STATION SALUTED

HON. DON SUNDQUIST

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. SUNDQUIST. Mr. Speaker, a few weeks ago, radio station WCRV in Memphis upgraded its signal to 50,000 watts, giving it a signal capable of reaching into eight States and making it America's largest Christian talk radio station.

WCRV has long been an active voice in the Memphis community, a source of spiritual support and comfort for many, and an active expression of Christian life. It is an important voice in Memphis, and now with its more powerful signal, it will be an important voice throughout much of the Midsouth.

I salute Dick Botts and Botts Communications for its commitment to Christian talk radio and their investment in WCRV. I commend General Manager Mark Loeffel and his staff for their stewardship. I believe it would please them to have the recognition of this house.

GIVING AWAY PUBLIC'S
RESOURCES

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. MILLER of California. Mr. Speaker, throughout my career in the Congress, and my tenure as a member of the Committee on Interior and Insular Affairs, few subjects have been more troubling to me than the archaic and wasteful practice of giving away valuable public resources to those who profit from them.

My idea has always been that the public's resources belong to all the public, not to a select few. The days of the Silver Kings and Robber Barons are supposedly a century behind us. The days of Teapot Dome are long past.

And yet, on nearly every resource issue that comes before my committee, the story is the same: private interests profiting—often very handsomely—from public resources obtained at a pittance.

This practice bothered me particularly during the Reagan years, and that frustration has continued through the current administration. The same people who lectured the poorest Americans about the evils of living off the dole were often making millions, and billions, of dollars by profiteering from timber, mineral, oil, gas, and water rights that rightfully belong to the public.

The very same people who lectured us about the need to run Government like a business were running our resource agencies like a cheese giveaway program for the homeless. At least the homeless are poor.

We have tried to take remedial steps. We raised water prices for irrigators; we compel offshore oil developers to pay higher royalties and rents; we ended the scandalous onshore oil and gas lottery; we mandated that timber companies pay a more reasonable amount for the purchase of public trees.

But at every step, we have encountered the rapid hostility of the Reagan-Bush administrations and the special interest companies who have gotten rich off public resources. Indeed, I cannot think of a single time either administration has joined me in fighting for one of these reforms. Nor have they aggressively sought to adopt the findings of the Grace Commission or the Linowes Commission that called for changes in the management of public resources in order to save taxpayers billions of dollars.

We are not discussing nickels and dimes. The Interior Department generates more revenues for the Federal Treasury than any other agency of Government except the IRS. When Interior fails to do its job, taxpayers lose.

Jessica Mathews, vice president of the World Resources Institute, has written a very timely and thoughtful column for the Washington Post on this subject, which I would like to share with Members of the House.

The article follows:

EXTENSIONS OF REMARKS

[From the Washington Post, Oct. 3, 1991]
OH, GIVE ME A HOME WHERE THE SUBSIDIES
ROAM

(By Jessica Mathews)

The loud noises emanating from the West are not the battle cries of a newly aggressive environmentalism but the overdue death throes of an era that began more than a century ago. The conflicts raging over salmon vs. hydropower, forests and wildlife vs. timber, mining rights, grazing fees, and water are all fundamentally the same. On the surface, each looks different. Underneath, they are all about natural resource use that is heavily subsidized or given away free under anachronistic federal policies.

Though he would never, in his worst dreams, have intended it, Ronald Reagan inadvertently provided environmentalists' text. The marketplace allocates resources more efficiently than government, he said—get government out of the way, and let the market work. That focused a spotlight on federal subsidiaries that distort markets, costing taxpayer dollars and encouraging wasteful resource use. Americans suddenly discovered that the same policies they condemn in the Brazilian Amazon were flourishing at home, left over from the 19th century.

Beginning with the Homestead Act, the government lured settlers to the West with promises of free land and access to its abundant resources. The mining law of 1872 gave a property right to mining claims, and charged no royalties. The Bureau of Reclamation provided cheap water to struggling farmers. The National Forest Service built roads to allow timber production. The Bureau of Land Management encouraged cattle grazing. Later, the Bureau of Reclamation and the Corps of Engineers built and operated dams to provide cheap electricity and irrigation in the Northwest.

Over the years, settlers turned into vested interests, while policies stayed the same. Homesteads became profitable corporate farms, still using federally supplied water sold by the government at a fraction of its cost. The Forest Service built a network of logging roads nine times as long as the interstate highway system, servicing a now mature timber industry. It sells timber below cost more often than not, costing taxpayers millions of dollars. By the government's own assessment, federally owned grazing lands are badly degraded from overuse, but grazing fees remain far below those on private lands, and substantially less than the government's cost of managing the range. Giveaways under the unchanged Mining Law cost the government nearly \$1 billion per year, sometimes financing vacation homes masquerading as mining claims for a few dollars an acre. And the Northwest is booming on electricity that costs 40 percent less than the national average.

Policies that made economic sense when the West was a harsh and empty frontier would be hard to justify today under any circumstances. When they also damage the wildlife and landscape westerners prize, and deepen a crippling federal deficit, they become untenable. But ending the subsidies, though inevitable, will be a lengthy and bitter fight.

What began as inducements long ago became a way of life for ranchers, miners, farmers and loggers. Paying market prices for the resources they use will lower profits for some, force others to change long accustomed practice, and put some genuinely uneconomic enterprises out of business. Some people know they have a good thing going and will battle to keep it. For others the ad-

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justments will cause economic hardship. For them, some of the federal savings can and should be used to ease the transition.

Ironically, the toughest battles may be for the hearts and minds of government bureaucrats that often behave as though they have forgotten whose interest they are intended to serve. The Forest Service first promised that its timber program would become self-supporting 85 years ago. Seven years ago, at wit's end, Congress ordered it to develop an accounting system that would pinpoint below-cost sales. The new system showed losses from logging in almost two-thirds of the national forests, but even this turned out to be an underestimate. To arrive at its figures, the Forest Service had resorted to tortured accounting practices which counted revenues that never appear in the Treasury and amortized investments in temporary logging roads over more than 2,000 years.

The solutions are uncontroversial in theory and explosive in practice (something worth remembering when dispensing free advice to shaky developing-country governments). Congress could ban below-cost timber sales—if it could ever reach agreement on what to count—or simply reduce its appropriations for building logging roads. New federal water contracts should charge the full cost of delivering the water. Federal grazing fees should reflect the full price of maintaining a healthy rangeland. A small increase in hydropower rates (if made soon enough) could save the salmon from extinction. And 1992, the 120th anniversary of the Mining Law, would be the right time to rewrite this flagrant federal giveaway.

One other valuable natural resource would still remain underpriced. Recreation in national parks and forests does not cover its costs either. Nearly 300 million visits will be made to sites run by the Park Service this year. Demand is growing so rapidly that visits are expected to double in 15 years. All this use puts enormous strain on the parks, yet the minimal fees collected by the government do not cover its costs or allow for the repair of accumulating damage. The same equation, heavy use at very low cost, holds true for hunting, fishing and camping in the national forests.

Environmental groups, sensitive to their members' interests, have generally shied away from this issue, but should no longer. Charging a realistic price for the use of scarce resources is sound policy whether the use is mining, grazing, logging—or hiking.

CONGRATULATIONS TO THE BOROUGH OF COLLINGDALE ON THE OCCASION OF ITS 100TH ANNIVERSARY

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. WELDON. Mr. Speaker, I rise today to congratulate the Borough of Collingdale on the occasion of its 100th anniversary.

The Borough of Collingdale was incorporated on December 23, 1891. In the last century, Collingdale has grown from a small town of less than 100 residents to a vibrant community of almost 10,000 residents.

Collingdale is a community of people with a rich heritage and tremendous accomplishments. Although it is still a relatively small

town, there have been some Collingdale natives who have received national and in some cases worldwide recognition. One such individual is John Bartram, the world famous botanist, who developed his interest in botany on the family farm in Collingdale. Likewise, athletes like Carson Thompson, the 1936 Olympian and Jill McKone, the first woman to score 1,000 points in women's basketball, have done Collingdale proud during their illustrious careers.

Collingdale's spirit of voluntarism flourishes, with two "all volunteer" fire companies and the Collingdale Athletic Club, which is one of the most active athletic organizations in Delaware County.

No other borough can match Collingdale's exquisite parklands. Collingdale Park is one of the most beautiful park and recreation facilities in the entire Commonwealth of Pennsylvania.

One of the borough's greatest accomplishments was the transition of the old Collingdale High School to the current Collingdale Community Center. This community center is one of the most comprehensive centers in Pennsylvania. It currently houses the borough administrative offices, the police department, the district justices, a branch campus of Delaware County Community College, the Collingdale Athletic Club, and the Collingdale Alumni Association.

Mr. Speaker, the Borough of Collingdale has grown and prospered in the last 100 years, and I rise today to congratulate the borough and its residents. All of us in Delaware County wish them peace and prosperity in their next 100 years.

CUBA'S "REVOLUTIONARY" PSYCHIATRY

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, in an October 4 editorial of the Wall Street Journal entitled, "Cuba's 'Revolutionary' Psychiatry," Frank Calzon of the Freedom House, describes the symposium entitled "Psychiatry and Human Rights in the 21st Century."

THE AMERICAS

(By Frank Calzon)

Next week, a symposium entitled "Psychiatry and Human Rights in the 21st Century" will be held in Havana. The meeting is co-sponsored by the Pan American Health Organization (PAHO), Cuba's Psychiatric Association and Fidel Castro's Ministry of Health. While the meeting itself is a questionable venture, it could take on some value if participants focus on Cuba's misuse of psychiatry against political dissidents.

This barbaric practice is, of course, not limited to Cuba. Years ago the World Psychiatric Association (WPA) investigated the imprisonment of human-rights activists in Soviet psychiatric hospitals. In order to avoid expulsion, the Soviet All Union Society of Psychiatrists and Neuropathologists withdrew from the organization. Cuba's psychiatric organization withdrew then in solidarity with its Soviet mentors.

Since then, Soviet authorities have acknowledged the charges and cooperated with

the investigation. After such practices stopped, the Soviet psychiatrists rejoined the WPA, but Cuba has not.

Last week, Freedom House and Of Human Rights released "The Politics of Psychiatry in Revolutionary Cuba" by Charles E. Brown and Armando M. Lago. Noted Soviet dissident Vladimir Bukovsky, himself a victim of psychiatric abuse, writes in the introduction: "Cuba has covered in 32 years what the Soviet Union achieved in 73. Within a single generation, Cuba advanced from 'revolutionary justice' 'social legality,' from liquidation of 'class enemies' to 'political reeducation' and [finally to] psychiatric treatment of those 'apathetic to socialism.' There are of course some differences * * * Soviet political psychiatry was intended as a camouflage allowing the regime to present a more 'liberal' image while continuing political repression. In the Cuban context, however, it just became another form of torture."

Human-rights activists in Cuba have braved imprisonment and government threats to tell visiting journalists about this practice. Tapes and letters about several cases have been smuggled out of the island, and victims and relatives traveling abroad have provided additional details:

Jose Luis Alvarado, a 16-year-old student who tried to flee Cuba by seeking political asylum in the Colombian Embassy, refused to sign a confession. He was sent to the Castellanos Ward at Havana's Psychiatric Hospital where he was given electroshocks and psychotropic drugs.

Amaro Gomez, a film scriptwriter who wrote Cuban samizdat was detained by the political police and sent to the same hospital. Of that experience, he wrote: "Mederos, whom we called 'the nurse,' comes to us every morning * * * Almost every day his various assistants call out loudly the names of the unfortunate chosen who will be asked to lie down on the wet cement so that the electrical current will travel better. Mederos then fastens the electrodes and the entire process is performed with routine skill, which often entails overlooking the placement of a rubber bit in the prisoner's mouth. It is no surprise then, that when that first jolt of power zaps the prisoner's body, his teeth grind down on his tongue, burning his mouth into a bloodied foam."

Roberto Bahamonde is a human rights activist to whom the Cuban government continues to deny permission to emigrate. Picked up by the police, his family looked for him at various police stations until they found him at Havana's Psychiatric Hospital, where he was given electroshocks and psychotropic drugs. He witnessed beatings, insane inmates wandering around naked, and walls and floors covered with urine, vomit and excrement. When his wife complained to hospital director Dr. Eduardo Bernabe Ordaz, she was told that there was nothing he could do. The ward was under the control of "state security," Castro's political police.

Yet another view of Cuban psychiatry comes from Eugenio de Sosa Chabau, a political exile who spent 20 years in prison before being transferred to the Carbo-Servia ward of the Havana Psychiatric Hospital. Several young boys were brought into the ward one day: "The boys had been caught writing anti-government graffiti on some building walls," remembers Mr. de Sosa, "and a judge of the people' declared that to do such a thing they must be insane and in need of psychiatric treatment. Before the day was over all the boys were systematically gang-raped by more than 30 patients in the ward. To this day I can hear their cries for help and see

their bloody bodies as I stood by in impotent rage. Not a single staff member intervened."

In early 1989, the secretary-general of the World Psychiatric Association, Fini Schulsinger, wrote: "WPA's procedural rules for processing complaints of abuse of psychiatry demand that complaints are examined in collaboration with the WPA Member Society in the country in question. As the WPA has no Member Society in Cuba, we cannot examine the complaint appropriately."

Cuba, however, is a member of the Pan American Health Organization. Cuban authorities take great pride in Cuba's health programs. It would be inconceivable for PAHO to refuse to include the testimony of Cuba's persecuted human-rights groups and victims of Fidel Castro's "revolutionary psychiatry" on the agenda of the Havana symposium.

Freedom House has a long history of defending human rights throughout the world, and Mr. Calzon reminds us that this is an issue which we should all take the time to recognize and act upon.

RECOGNITION OF THE BROOKLAWN BASEBALL TEAM

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. ANDREWS of New Jersey. Mr. Speaker, I would like to recognize the team from Brooklawn, NJ, for winning the American Legion Baseball World Series. The 19 members of the team are a source of great pride to my district. In the words of Christopher Jones, a staff writer for the Courier-Post newspaper:

BROOKLAWN IS NATIONAL CHAMPION

(By Christopher Jones)

BOYERTOWN, PA.—It took 40 years but Joe Barth Sr. and his Brooklawn baseball team finally won its first American Legion baseball national championship.

Brooklawn scored four runs in the sixth inning to ease a 3-0 deficit, and Scott Lavender hurled 6½ innings of two-hit relief en route to a 5-3 win over Newark, Ohio in the American Legion World Series final Sunday night at Bear Stadium.

"This is the greatest feeling in the world," said coach Joe Barth, Jr. "I'm just so happy for my dad. I didn't think this would ever happen. My dad has put so much time and so much money into this team, but it has been worth it."

"This makes up for 40 years of hardship," said Barth Sr.

Brooklawn, 54-10-2 and the New Jersey Champion, started the game-winning rally when Mike Harris reached base to lead off the sixth after getting hit by a pitch.

After Mike Morarity flew out, Kevin Cunane (2-for-3) walked and Lavender was hit by a pitch to load the bases. John Mader followed with a bloop single to score Harris, cutting the deficit to 3-1.

When Brett Laxton walked to force in a run, Newark pitcher Troy Hupp was lifted by Manager Dave Froelich, who opted to bring in reliever Brad Hostetter.

Hostetter walked Jeff Manuolato to score Lavender, the winning pitcher, with the tying run before Derek Forchie walked to force the winning run.

Brooklawn added an insurance run in the seventh when Morarity, who led off the inning with a single, scored on an error.

"These kids are a tough group of kids," said Barth, whose team defeated Newark 3-1 in its first game of the World Series behind the complete-game pitching of Lavender.

"It took a while for me to get in a groove this time," said Lavender, who went 20 with a 0.40 ERA in the regional and national competition. "But I knew we were going to come back. We were too hungry and wanted it too badly."

Brooklawn, whose previous best finish was national runner-up in 1984, got the most of its six hits and a combined five-hit performance by Laxton and Lavender.

"I was shook when we got down, 3-0, but I thought we would come back," said Barth Jr. "Our defense kept bailing out Laxton or it would have been worse. He was struggling so I had to make a move."

"I probably should have started Lavender, but we were worried that they would catch up to him after seeing him before. When I brought him in, all I expected was for him to keep us in the game. But he's a tough kid, and he did a lot more than that. He did a great job."

Newark, which finished 64-15 after its first trip to the Legion World Series, scored two runs off Laxton, due to three Brooklawn errors, to take a 2-0 lead before Laxton was replaced by Lavender.

Newark, a 10-7 winner over Gonzalez, La, in the afternoon semifinal game, got another run in the fifth on a lead-off home run by Ryan Beeney, the American Legion Player of the Year, before Brooklawn made its game-winning comeback.

Barth Sr. and coaches Barth Jr., Dennis Barth and Mike Mevoli received the tournament's Jack Williams Leadership Award while Lavender, Harris and Mader were named to the all-tournament team.

A SALUTE TO LINTON FREEMAN

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. STOKES. Mr. Speaker, I rise today to pay tribute to Mr. Linton Freeman, an outstanding member of the Lee African Methodist Episcopal Church in my district.

Linton's service to the church and the congregation has spanned over 35 years. During this time, Linton has served on the trustee board of the church, on the boards of several church youth organizations, and as a delegate to the general conference of the A.M.E. Church.

In addition to his dedicated service to the church, Mr. Freeman has been involved in other charitable organizations and has been the recipient of numerous honors and citations including the "This is Your Life" award, presented to him when Carl Stokes was mayor. As a veteran of the U.S. Army, Linton received a good conduct medal and five battle stars.

Mr. Speaker, I laud Linton Freeman and his wife, Ruth, for their loyal service to the A.M.E. Church and the citizens of Cleveland. I am extremely proud of Linton and would like to share with my colleagues the following article in the Reporter newspaper concerning Linton and his many achievements.

CHRISTIAN PROFILE

One of the most outstanding members of the African Methodist Episcopal Church in

the Cleveland area is Linton Freeman. He was born May 25, 1918 and was educated in the public schools of Cleveland—Fairmont Jr. High and East Technical High School and attended the old Fenn College.

Linton is a veteran of the United States Army 1942-1945. He received an honorable discharge with the rank of staff sergeant, a good conduct medal and five battle stars.

Between the years of 1945 and 1973, he was an employee of the United States Postal Service and is retired; from 1947 to 1984, managed Ohio Department of Liquor Control from which he is also retired.

Linton is secretary, trustee Board of Lee Memorial A.M.E. Church; secretary finance commission of the Church; member trustee board of Murtis H. Taylor Multi-service Center 1979-1990; he is a member of the 21st District Caucus; third Ward Democratic Club and also the 8th ward delegate to the General Conference of the A.M.E. Church from 1956-present; a member of the Trustee Board of the Teen Father Program.

Past organizations and offices held include: superintendent of church Sunday School, president the Laymen's Organization, the Youth Choir Steward and Class Leader, president of the Mail Handlers Association of the U.S. Post Office, Cleveland Branch, member of the general Board of the African Methodist Episcopal Church, 1976-1988.

Linton Freeman is recipient of many awards and citations from various organizations including This is Your Life when Carl Stokes was mayor; life membership of the Future Outlook League, Life member of the NAACP and many other organizations have shown their appreciation to Linton Freeman for meritorious services.

Congratulations to Linton and Ruth Freeman for devoted services to the church and community.

BOB E. STOREY

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. RICHARDSON. Mr. Speaker, this weekend my constituents in Santa Fe will honor a journalist who has devoted his entire professional life to the examination of politics in his community and State. In the course of my own career, he has been sometimes a critic, often a friend, and always a significant influence.

Bob Storey, who will be named a Santa Fe Living Treasure on Sunday, covered all of my campaigns and many of my political battles until his retirement in 1988. He asked the hard question, and held me and the other politicians he covered to a high standard of industry and integrity, yet he always gave credit where it was due.

Bob will be honored for "his participation in the life, heart, and spirit of our community." No one participated more enthusiastically than Bob until he was sidelined by ill health. Mr. Speaker, I bring Bob Storey to the attention of my colleagues as an example of an outstanding journalist and a fine man.

THE OMEGA BOYS CLUB OF SAN FRANCISCO

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Ms. PELOSI. Mr. Speaker, I rise to bring to the attention of my colleagues the wonderful work done by the Omega Boys Club in San Francisco. I particularly want to recognize Joe Marshall and Jack Jaqua, the club's cofounders.

To date, the Omega Boys Club has helped 104 young men and women move from the despair of the streets to the opportunities of college by providing guidance and financial assistance.

Norflis McCullough and Jai Watkins are two such young men who were able to break away from gang life and attend college. Both young men know that the boys club has given them a new chance at life. Now, they actively participate in encouraging other young people of the neighborhood to visit the Omega Boys Club and strive for college.

I am submitting for the RECORD a recent San Francisco Examiner article about the success of the Omega Boys Club.

I urge my colleagues to read it and recognize the valuable contribution made by the Omega Boys Club and others like it across the country to our Nation's at-risk youth. Our young people must realize that there is hope for the future.

COLLEGE IS THE ALPHA OF OMEGA BOYS

James White had promised his mother that if he could avoid being sentenced to prison for assault, battery and robbery charges pending against him, he would stay out of trouble.

When he beat the rap, he tried hard to keep his word. But when you are one of the boys in the 'hood, trouble seems to follow. He still maintains his innocence but he ended up in jail after a fight with other youths.

"I never was a real bad dude," said White, 20. "Just drank beer, smoked weed, rolled dice . . . and got involved in some turf dramas and sold a little dope."

He was the kind of kid that society figured was destined for the California Youth Authority, maybe even San Quentin. But his destiny lay elsewhere: This week, James White is headed to Grambling University, a black college in Louisiana, in the quest for a college degree that so many of his "homies" never had the chance to pursue. He remains on probation—the kind that will send him back to prison for even one minor screw-up.

White is just beginning to walk down a road that Norflis McCullough and Jai Watkins, two second semester freshmen at Morris Brown College, another historically black college in Atlanta, and about 100 more boys and girls already have traveled.

"If it wasn't for the club," says McCullough, who grew up in the Western Addition, "I don't know where I'd be. The club gave me a second life."

The club is the Omega Boys Club, which already has helped 104 young men and women head to college by providing guidance and financial assistance. While the club does not require the kids to choose a black college to attend, about 70 of them have.

Most of the kids whom Joe Marshall and Jack Jaqua, co-founders of the Omega Boys

Club, work with are the kind society writes off, at least in terms of being college-bound.

"Most of the kids don't know about black colleges because they aren't around here," says Marshall. "We just want to give them a choice. We don't like for them to be in a place that simulates their environment. We know that 70 percent of black students who go to black colleges graduate and only 30 percent of black kids who go to predominantly white colleges graduate."

White remembers the first time Marshall paid him a visit behind bars. "He gave me a book on Malcolm X," he says. "I thought I was him for a minute. It made me think: What am I going to do with my life? I learned the politics of dope. I learned about who I was. I made a serious transition."

White, an honor roll student in junior high school, had thought about college earlier. He joined the club last year and planned to take the annual tour to black colleges. But a parole violation canceled those plans and sent him back to jail.

"A lot of kids get destroyed by that," says Marshall, "but James got out of jail and got right back in the club. He paid his restitution fees, he's still on probation but he's going to college."

PAINS OF FILLMORE

McCullough, 20, never spent any time in prison but he suffered through what he calls "the pains of the Fillmore"—watching crack cocaine cut a devastating path through the neighborhood.

"Friends have been killed. Friends' mothers are on crack, selling their bodies for it," he says.

McCullough participated in gang activity. He's sorry now he was that type of role model for younger kids. He's trying to give them a new tip.

"I talk to them about going to school, and on to college. I want to come back to my neighborhood and do something positive," he says.

His words were not lost on 18-year-old Watkins, who completed only the 10th grade and until last Dec. 7 was serving jail for dope peddling and assault.

The club helped him get his GED while he was incarcerated. Three weeks after he was released, he was knocking on McCullough's door—at Morris Brown College.

A CHANGE OF SCENERY

"I'm feeling good," Watkins says, a broad smile stretching across his face. "In a matter of weeks, I moved from a jail dorm to a college dorm."

His major is sociology. His experience has motivated him to talk to other boys in his 'hood when he returned home this summer.

"Others wish they could be in my shoes now," he says. "I was only dreaming about going to school. Now, I've broke the chain loose and the brothers in the Fillmore are starting to realize there's nothing out there but death."

SIGNS OF POSITIVE CHANGE FOR SOVIET JEWS

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. BEREUTER. Mr. Speaker, the United States has long been troubled by the deeply ingrained, systemic anti-Semitism of the Soviet Union. Indeed, the Jackson-Vanik amendment

was designed to help the oppressed Jewish minority to emigrate from the Soviet Union. And, every time the Soviet and American leaders meet, the issue of the rights of Jewish minorities is raised.

The political and social changes that are occurring in the Soviet Union have dramatically affected the lot of Soviet Jews. Emigration has skyrocketed, and leaders such as Mikhail Gorbachev and Boris Yeltsin are making a conscious effort to make amends for past injustices. Most recently, Gorbachev acknowledged a 50-year-old massacre of some 30,000 Ukrainian Jews.

Mr. Speaker, the October 9, 1991, edition of the Omaha World Herald included an insightful editorial on the positive changes of Soviet Jewry. According to the World Herald, "With a new day dawning in the Soviet Union comes the hope that conditions will improve to the point where those who want to stay in their homeland will be able to do so in freedom and dignity." Indeed, this is a hope that we all share.

Mr. Speaker, this Member would request that this editorial, entitled "Another Soviet Turning Point" be inserted into the RECORD.

ANOTHER SOVIET TURNING POINT

Mikhail Gorbachev has taken a small step toward righting an old wrong. The Soviet president went against more than 70 years of government-sanctioned anti-Semitism, deploring the Soviet mistreatment of the Jews and lamenting that so many of them are leaving the country.

His remarks came appropriately during a ceremony marking the 50th anniversary of the Nazi massacre of thousands of Jews at Babi Yar, near the Ukrainian capital of Kiev. More than 30,000 Jews were machine-gunned to death by the Nazis in a ravine on Sept. 29-30, 1941.

Babi Yar evokes the perpetual shame of the Nazi era. It also casts shame upon the communists who for decades concealed the fact that the victims were mostly Jews.

Anti-Semitism has a long and sordid history in Russia. Pogroms were common in czarist times. Soviet leaders beginning with Josef Stalin spoke against anti-Semitism in public, but pursued hateful policies against Jews behind the scenes. Jewish writers and political activists were among those targeted by Stalin's purges. Stalin's paranoid imagination dreamed up a "Jewish doctors' plot" against his life, giving him an excuse to have more people arrested and executed.

Even during "better" times, Jews were discriminated against. The best career routes were often blocked to them. They were denied the right to practice their religion. Their writers were arrested and beaten. Hate-mongers distributed propaganda borrowing thoughts from Hitler and calling for attacks on Jews.

More than 500,000 Soviet Jews, understandably, have emigrated to Israel since 1969. Another 200,000 resettled in the United States and elsewhere. An estimated 1 million more are expected to emigrate within the next few years.

For too long, the official silence about the attacks against Jews went on. Now Gorbachev is daring to speak out.

True, the Soviet president mentioned the tremendous loss of talented, productive people. His country can ill afford to lose hundreds of thousands of its better-educated people.

But his remarks at Babi Yar went beyond such self-serving concerns. The ceremony, he

said, "brings hope that we, our renewing society, are able to draw lessons from tragedies and mistakes of the past." He urged his countrymen to create an atmosphere of tolerance. He condemned anti-Semitism.

Gorbachev, to his credit, has lifted some of the restrictions on those who want to emigrate. But people shouldn't be forced to emigrate to secure their basic human rights. With a new day dawning in the Soviet Union comes the hope that conditions will improve to the point where those who want to stay in their homeland will be able to do so in freedom and dignity.

NATIONAL BUSINESS WOMEN'S WEEK

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. MILLER of California. Mr. Speaker, during the week of October 20-26, 53 million working women throughout the United States will be celebrating National Business Women's Week. This celebration is to show what business and professional women are doing, their contributions to businesses and professions, and how business training helps every woman.

The National Federation of Business and Professional Women unites over 140,000 working individuals in more than 60 countries for the promotion of their common interests in education and industrial, scientific, and vocational activities.

Since 1919, business and professional women have been instrumental in numerous reforms, among them a bill requiring equal pay for equal work, revision of State inheritance tax laws, the establishment of status of women commissions, a bill outlawing sex discrimination in employment, and support for an equal rights amendment to the Constitution. Business and professional women have been instrumental in elevating the standards for women in business and the professions.

Mr. Speaker, I would like to take a moment to recognize the business and professional women groups in my district in California. The Central Contra Costa, Martinez, and Todos Santos business and professional women groups are associated with the national and California Federations of Business and Professional Women and have helped to promote betterment of our community and its residents. I know my colleagues in the House of Representatives join me in appreciation of the service given to the community by business and professional women throughout the United States.

CREEPING REG-NEG

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. PEASE. Mr. Speaker, I thought my colleagues might be interested in the following editorial which was published in the Washington Post on August 24, 1991. It refers to the

process known as regulatory negotiation, which was the subject of my bill, H.R. 743. The bill passed last year.

The implementation of "reg-neg" is the result of some tenacity on my part. I first introduced the concept in legislative form in 1981, and I reintroduced it in every Congress after that. The bill made a little more progress in each Congress until it was finally enacted last year.

As my congressional career winds down, it is very rewarding to receive recognition for some of my more notable accomplishments in the trade and tax arenas. However, I derive a special pleasure from commentary on my lesser-known achievements like reg-neg, which will allow the Government to function more smoothly in the years to come. I hope you and my colleagues will find the editorial of interest. [From the Washington Post, August 24, 1991]

CREEPING REG-NEG

One of the places where government tends to break down is at the busy intersection of politics and science. Congress is simply not equipped to make the technical judgments that many of the laws it passes require, particularly in the health and safety and environmental fields. The technical issues are hotly contested besides; the typical legislative response is to take refuge in a fuzzy formulation and toss the matter to the regulators who have become the modern government's fourth branch. Too often the regulators' handiwork will then be taken to the courts by the very parties who were fighting over the wording in Congress in the first place. The business of giving effect to the laws tends to be more circular than quick.

Now comes a new process intended as a kind of shortcut through this laborious older pattern. It is called reg-neg, which stands not for negation but for regulatory negotiation. The negotiations process may already have helped to crack two of the harder issues from last year's copious amendments to the Clean Air Act, including an almost impenetrable set of questions relating to alternative fuels on which tentative agreement was announced last week.

The Administrative Conference of the United States, having commissioned a study, approved regulatory negotiation for use by federal agencies in 1982. Last year Congress gave its official blessing as well. Normally an agency with a regulatory task assembles what information it can and writes the rule on its own. The rule is published for comment, then fine-tuned or not as the agency and Office of Management and Budget, representing the president, see fit, and made final. That's when one side or the other and sometimes both will take it to court, and while the courts can only overturn regulatory decisions on rather limited grounds, the litigation tends to eat up a lot of money and time.

The negotiating process is in part an effort to do the fighting up front. A committee is formed—the law requires that it be broadly representative of the parties at interest—and tries to work out a compromise acceptable to the parties and the agency in advance. The compromise will often include a promise to refrain from future litigation. The negotiating sessions are required to be public; in that sense the process is even more open than normal rule writing. Once agreement is reached, the proposed rule is still published in the Federal Register for comment as under normal procedures. Thus no group forfeits any right, including the right to go to court, that it already has.

The process has been tried about 20 times, mostly though not always with success. Federal officials note that not all disputes are amenable to it; sometimes the span of disagreement is so great that the agency can only cut through on its own as in the past. But where it works, as apparently with alternative fuels, it's plainly a good idea. Regulatory government on the present scale is recent enough that the country is still feeling its way. This seems to be a sensible step along the path.

NEED FOR NONPROFIT HOSPITALS TO TREAT THE POOR

HON. BRIAN J. DONNELLY

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. DONNELLY. Mr. Speaker, I am submitting for the CONGRESSIONAL RECORD today an Associated Press article which once again points out the failure of nonprofit hospitals to respond to the needs of their communities.

This article describes a woman from Harlem in New York City who came to a hospital emergency room in the final stages of labor. The hospital refused to treat the woman—almost assuredly because she had no health insurance—and the woman was forced to give birth on a stretcher in the hospital's admissions office. A physician was ordered to attend to the woman, but he refused. According to the article, the doctor "sat there talking on the phone" while the baby was being delivered; when emergency medical technicians asked for something to wrap the baby in, a doctor "reached over and threw some examining gowns—just threw them" at the patient.

Mr. Speaker, this sad story is one in a continuing saga of hospitals which refuse to provide care for the poor. This shameful behavior is why Congress enacted the so-called patient dumping provisions of the Social Security Act in 1985, and it is why I have introduced legislation to redefine the standards which nonprofit hospitals must meet as a condition of exemption from tax. I am currently redrafting that legislation, and this news report merely proves my point that tighter standards for tax exemption are needed.

I would urge my colleagues to read this article and consider the pressing need for legislation in this area.

WOMAN GIVING BIRTH REJECTED BY HOSPITAL

NEW YORK.—A doctor has been suspended for refusing to admit or assist a woman in the last minutes of labor because the obstetrics ward was full, hospital officials said yesterday.

The woman gave birth on a stretcher in a Harlem Hospital admissions office, aided only by two emergency medical technicians while doctors and other hospital employees watched and other people strolled by, one of the technicians said.

"No one offered to give us a hand," said Emergency Medical Service technician Mary Dandridge, who delivered the child along with her partner, William Ludwig. "As far as they were concerned we weren't there."

APPALLING

"I've never seen anything like it," Dandridge added. "To put a patient through that was just appalling."

State Assemblyman Alan Hevesi said he asked District Attorney Robert Morgenthau's office to investigate possible criminal misdemeanor charges against the doctor, a resident at the city-owned hospital.

"He has been suspended from medical duties and disciplinary charges have been filed against him," said Steve Matthews, a spokesman for the city's Health and Hospitals Corp.

Charlesetta Brown gave birth Sunday morning to a 7-pound, 3-ounce boy, Jeffrey. It was her second child. Mother and baby were eventually admitted to the hospital and released Tuesday.

Dandridge, an EMS technician for six years, said they were called to Brown's home Sunday and found her in labor, with contractions about five minutes apart.

Although Harlem Hospital was on "diversion"—meaning only critical cases should be taken there—the ambulance crew went there because it was the closest and Brown was close to delivering, Dandridge said.

The EMS crew has the right to override a diversion, under a 1983 city law that bars hospitals from refusing emergency cases.

"When we arrived at the hospital, the doctor on duty told us he could not accept the patient and told us to leave," Dandridge said. "We told him we couldn't do that and said he must examine and stabilize the patient first."

The doctor said there was a bed for the mother but none for the baby, according to Dandridge.

An EMS supervisor, called to the scene, and the hospital administrator on duty ordered the doctor to attend to Brown "but he just outright refused," Dandridge said.

"He sat there talking on the phone while we delivered the baby," Dandridge said. "They wouldn't even give us an obstetrics kit."

After the delivery, the technician said, they asked for something to wrap the baby in. "Another doctor reached over and threw some examining gowns at us—just threw them. A couple landed on top of the patient."

ADMINISTRATION TRIES TO ACHIEVE THROUGH REGULATION WHAT THEY CANNOT THROUGH LEGISLATION

HON. GERRY SIKORSKI

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. SIKORSKI. Mr. Speaker, illegal. That's the best word to describe the administration's attempt to shave budget savings from the Medicaid Program with Health Care Finance Administration's recently published interim final rule on provider taxes. It's another example of this administration trying to achieve through regulation what it can't achieve through legislation—a familiar story that we saw time and again in the Reagan administration, health policy being dictated by the economists at the Office of Management and Budget. The problem is that it is the States and the poor who will suffer with this backdoor maneuver. In Minnesota, it could cost us anywhere from \$50-80 million.

Medicaid serves some of America's neediest and most vulnerable populations, especially low-income women and children. It pro-

vides coverage to more than 28 million people, many of whom would otherwise be added to the ranks of the uninsured. Medicaid is a Federal/State partnership that allows States to use Federal funds and their own dollars to purchase medical services on behalf of eligible aged, blind, and disabled individuals, and dependent children and their families. The issue is whether or not States should be allowed to use voluntary or provider taxes to increase their Medicaid reimbursement from the Federal Government. The issue was settled by a public law passed by Congress and signed by the President last fall.

These taxes are not shams or loopholes as they have been characterized by this administration. These taxes, including Minnesota's surcharge program approved in its last legislative session, were specifically authorized by Congress in the omnibus budget agreement of 1990. The Senate was concerned about the Office of Management and Budget's estimates on the cost to the Federal Government of these programs. In the budget conference the Senate allowed Dr. Wilensky—the Administrator of HCFA—accompanied by Tom Scully of OMB to negotiate this provision. The Senate had wanted the moratorium prohibiting HCFA from issuing regulations on both voluntary contributions and provider taxes to expire, but the Senate agreed to trade voluntary contributions for provider taxes. That was the agreement. Dr. Wilensky herself agreed to it with OMB sitting right beside her. Later, HCFA decided it was a bad deal and now they want to renegotiate. The problem is the agreement was sealed in statute and it's too late for re-criminations—unless of course you decide to violate the law.

The administration is using an aggressive p.r. campaign to replace its legal authority. Unfortunately, it looks like it's working, especially when newspapers traditionally dedicated to promoting good health care policy like the Star Tribune come out with editorials decrying these taxes as "intellectually dubious" and "naughty."

The Health Care Financing Administration and the Bush administration need to be reminded that it doesn't write the law—its job is to implement it. It better go back and read the law again: "nothing in this title shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures for medical assistance for items or services, attributable to taxes (whether or not of general applicability)." If the administration wants to change the policy that was established in the budget agreement then it'll need to ask for that change from the committees of jurisdiction in Congress. For now, Congress and the statute say "no."

On September 30, the Health and Environment Subcommittee held a hearing on this issue. We asked Dr. Wilensky to come and explain her rule. She refused. She was not prepared to tell Congress with what authority she issued it or what it means. Despite this being an interim final rule, apparently she doesn't know what it means or how it will impact the States. We know how it would affect Minnesota and it's unacceptable. For the hearing record, I submitted some documentation of how this proposal would impact Minnesota in real dollars and real cuts in programs that

today serve only a fraction of the poor. Dr. Wilensky thought she would be able to explain this rule by October 16, 1991, so she'll appear before the Health and Environment Subcommittee on that date. I'm looking forward to discussing this with her. I hope that in the interim, HCFA will decide to withdraw the rule. If not, I don't intend to let the administration get away with breaking the law.

OUTSTANDING PRINCIPAL HONORED

HON. DON SUNDQUIST

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. SUNDQUIST. Mr. Speaker, last week 59 outstanding educators were honored as "National Distinguished Principals" by the U.S. Department of Education and the National Association of Elementary School Principals. One of those honorees is from my district, William B. Walk, Sr., principal of Raleigh-Bartlett Meadows School.

I was pleased to be able to talk with Bill and his wife, Wilma, during their visit to Washington. I was impressed by the leadership he has demonstrated. Secretary Alexander is right. Principals can make all the difference when it comes to good schools and successful students.

Bill Walk and all who earned this very important honor offer the Nation an example of what might be accomplished in America's schools. For their example, for their achievement, for their leadership, and most of all, for the inspiration and encouragement they offer our young people, we owe them our thanks.

TRIBUTE TO THE DE LA SALLE COUNCIL NO. 590 OF THE KNIGHTS OF COLUMBUS ON THEIR 90TH ANNIVERSARY

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. WELDON. Mr. Speaker, it is with great respect that I rise today to bring to your attention the De La Salle Council No. 590 of the Knights of Columbus on their 90th anniversary which they are celebrating this year. The De La Salle Council No. 590 is located in Delaware County, in my congressional district.

The Knights of Columbus have a long history of service to their members and to the community. On June 25, 1901, 90 years ago, De La Salle Council No. 590 was instituted. Since then the council's membership has grown and so has the number of charitable events that the council sponsors.

This organization, under the able leadership of Grand Knight Chuck Cunningham, sponsors many annual charitable events which benefit thousands around the Delaware County. One such holiday event is the "Nuns' Christmas Party" where members take part in the entertainment of the evening. They also hold masses and picnics for the members' families

and the local community. They sponsor fundraisers for local causes. They also had a swim club built in 1961 and since then has been of great use to the residents of the community. The group hosts special events there such as Don Guanella Day where the handicapped of the Don Guanella School take advantage of the pool facilities.

Another noteworthy achievement of the De La Salle chapter was initiated by one of its members, Garido Mariani. In 1980 he suggested what is now Law-Armed Forces Day. This day has received both local and national recognition. I have only briefly outlined some of the work that this council has been a part of. The Knights of Columbus should be honored for their outstanding work and dedication over the past 90 years.

The council will hold its official celebration on October 12, 1991, and I would like to wish the members well on this auspicious occasion.

Mr. Speaker, I am most proud of representing such an outstanding group of citizens and organization. They have exemplified charity and patriotism to our community and to our Nation. For that I salute them.

ROBERT C. BYRD: HIS BROTHER'S KEEPER

HON. NICK JOE RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. RAHALL. Mr. Speaker, the Honorable ROBERT C. BYRD, senior Senator from West Virginia, having served 32 years in that body, after serving 6 years in the House of Representatives, has been my mentor for all of the years I have served in this House, as well as during the time I was employed by Senator BYRD during my student years. I revere him as a person, and as a public servant, to the Nation as well as to his West Virginia constituency. He is not only an able legislator, he is a parliamentarian without equal among his peers, he is an avid historian as is reflected in parts I and II of his "History of the Senate as an Institution" he has recently published. He is, by every definition, a statesman.

Senator ROBERT BYRD of West Virginia does not need me to stand up for him. He does that very well by himself. He states what he intends to do, and then he proceeds to do it. What he intends to do is to send back to West Virginia a part of the Federal taxes they pay into Washington's Treasury. Why? Because the State, despite its decade-long heroic efforts, which by the way continue, to make an economic comeback from earlier recessions, still needs help in creating jobs. Senator BYRD has come under unparalleled attacks recently in both print and broadcast media coverage, for sending funds back to West Virginia—for roads, for education, for health, and for highways. He has also come under attack in an unprecedented manner from Members of the House of Representatives, despite House rules prohibiting the mention of another Member's name, and particularly a Member of the other body. He has been attacked, in my view, by some who are not fit to clean his shoes, but of course the rules of the House prohibit

me from making that statement, so I will not, I do not, make it here.

In the Washington Post this past weekend, an article quoted the minority whip of this body as stating that his party would use BYRD's penchant for sending funds and Federal jobs to West Virginia as proof that Government spending is out of control, and that long-term incumbents like ROBERT C. BYRD should be limited in the number of years they are elected to serve in either the House or the Senate.

I think they miss the point.

There is a peculiar, but well-known truth, both inside and outside the beltway, that experience and expertise count—and that the folks back home know it, understand it, and expect it to pay off in their favor. It's also a well known fact that experience and expertise come with longevity—which brings with it seniority. Members of Congress were elected and sent to Washington to represent the needs of their constituencies. Senator BYRD is not doing anything any different from any other Member of Congress, including those who attack him from this body, bringing Federal dollars to his constituency—he just does it better. Does he do it from a seat of power as the chairman of the Appropriations Committee? Yes, of course.

Have other sitting chairmen of the Appropriations Committees of the House and Senate, past or present, done the same thing? Yes, they have and they do. Should they? If you sat in their chairs, wouldn't you?

Let us look at the raid people are talking about when they castigate Senator BYRD for moving Federal jobs to West Virginia. In the first place, where is it written that only people living in the immediate Washington, DC metropolitan area should have, or can be expected to complete the tasks necessary to keep the Government running? No where, that's where it's written.

Here is the rhetoric that has been used by Members in this body who castigate Senator BYRD for what he is doing: "we shouldn't spend the money—its adding to the deficit which is so huge as to be unthinkable."

Well, the deficit reached unthinkable proportions under two Republicans in the White House, so those in the other party who want to get hyper over it, are preaching to the choir when they preach to Democrats. However, what Senator BYRD is doing by moving jobs to West Virginia is to save the Government money. There are people in West Virginia who are hardworking and give an honest day's work for a day's pay, and they can afford to earn less because of a lower cost-of-living rate in the State, and still do the same work, and to do it just as well as their higher-paid counterparts located here in the District or its suburbs. That is a saving to the Federal Government, not an addition to the Federal deficit.

Second, the 3,300 jobs Senator BYRD is sending to West Virginia represents less than 1 percent of the 360,000 Federal jobs that will remain in this area. That is not a raid by anyone's definition. That the leadership of this House's minority party call it a raid is a source of amusement based on the actual numbers involved. So call it an amusement, but don't call it a raid. And don't call it an increase in Federal indebtedness—it's a savings and they know it, and they can't stand it.

Third, in West Virginia the cost of buying, renting, and leasing property, per square foot, is far lower than it is in this high-rent area. The housing of that less than 1 percent of workers being moved to West Virginia will also save the Government money. That amounts to tremendous savings in two major accounts—Federal salaries and office space. What about housing for the workers themselves? There are homes in West Virginia that are well-built and spacious, located in the midst of the most beautiful of God's country that, when you consider the lower property taxes in West Virginia, will assure the lowest mortgages and taxes those workers could ever hope for, and could never hope for in the Washington area.

And so moving less than 1 percent of Federal jobs to West Virginia, will not only save the Federal Government money, and give the individual worker or family access to affordable homes at lower rates, it also places them in one of the most scenic, most beautiful, most environmentally protected areas of this country. And if you couldn't ask for a better place to work and live based on the above attributes, you should add to them the fact that West Virginia has, for the past four decades, enjoyed the lowest crime rate of all the 50 States put together. For families to feel safe against all sorts of crime and criminal elements, including the drug trade translates easily into improved worker morale all around which in turns means increased worker productivity all around.

Finally, Mr. Speaker, I will address the issue that was raised on the floor of this body on Wednesday of this week, in opposition to a \$148.5 million line item contained in the fiscal year 1992 transportation appropriations bill, for work toward completion of corridor G of the Appalachian highway system in southern West Virginia.

Members of this body, who had been previously reprimanded for identical actions throughout the week on other appropriations bills, still rose on the floor of this body and castigated Senator ROBERT C. BYRD of West Virginia, by name and by title, for his action.

The Appalachian highway system, which has numerous corridors that if ever completed, will link 13 States in the poverty pocket of the United States known as Appalachia. In June of this year, the Committee on Public Works and Transportation was advised that at today's ridiculously low appropriations level for the Appalachian highway system—as authorized under the Appalachian Regional Commission Act [ARC]—will not permit the completion of the Appalachian highway system before the year 2065. This system of highways—roads out of poverty for 20 million people living in isolation in 13 States—is 25 years old. Over that 25 year period, the Appalachian highway system has received precisely \$3.6 billion in Federal funds.

Let me repeat that for you. In 25 years, the Appalachian highway system has received exactly \$3.6 billion in Federal funds. The ARC in its entirety over that 25 year period has received only \$5.7 billion.

If it takes another 75 years to complete, in year 2065, it will be the first highway project in this or any other country's history that took 100 years to complete. It only took us 35 years to complete the Interstate Highway Sys-

tem—yet these Appalachian States cannot even get to most of the Interstate System—it does not serve them because there are no access roads, no direct linkages, to the Interstate System.

It is time to bring to the people of Appalachia access roads—access roads leading to jobs, to the free enterprise system where they can use their talents, and where their work ethic can be brought to bear on their need, their right, to the American dream.

Senator BYRD, like the rest of the West Virginia delegation, knows these people, we know their daily hardships, and we know their great dignity. They still have hope, and they still dream. Don't think of Appalachian as a shadowy outline on the map that is somebody else's problem, one that has been nearly forgotten over the past decade, but think of it as a place where country roads pass by porchlit homes where 20 million people lay asleep at night and still dream of a helping hand, not a handout.

I can assure you that Senator ROBERT C. BYRD views them as men and women and children who need nurturing, who need adequate shelter, food, clothing and education, in order to break the cycle of poverty they have known in Appalachia. They are his, and our, brothers and sisters. We are our brother's keeper, says the Good Book.

The people of Appalachia need a road out, and that road out is known as the Appalachian highway system. And that is what Senator BYRD was about, when he provided \$148 million for corridor G with the full concurrence of both the House and the Senate, in conference, on the transportation appropriations bill for fiscal year 1992.

If there was ever a testimonial to incumbency, it is personified in Senator ROBERT C. BYRD, in everything he does—and he serves not just West Virginia, but the Nation, as he presides over the Senate Appropriations Committee.

You want to cry, whine and wring your hands over the deficit—Senator BYRD's every action is to save money for the Federal Government. It is not as though other Members of this body wouldn't do the same thing—it's just that they haven't the seniority to sit where Senator BYRD sits.

Some of the Members who are wailing about breaking last year's budget agreement with this so-called out of control spending by Senator ROBERT C. BYRD, did not vote for last year's budget agreement. I didn't either—but at least I am not now jumping up and down about the evils of busting it. I would bust it, if I could, in order to cross-walk funds from one account to another, namely from foreign aid and defense to domestic programs.

But the record shows that Senator ROBERT C. BYRD, chief architect of last year's budget agreement, has steadfastly resisted and rejected all efforts in the other body to bust that budget agreement, and no one knows better than he the temptation, justifiably, is great to do so in the face of the failed coup in Russia and the end of the cold war. Making Senator BYRD's resistance to breaking with last year's budget even more poignant is the recent Presidential announcement of a reduction in our nuclear arsenal. Talk about increasing temptation to use military and defense dollars for at-

home needs, it really raised expectations about a peace dividend, but then the President said it might cost more to shut down than it would to continue to build our nuclear arsenal.

But don't wait for ROBERT BYRD to break that agreement, for his word is his bond. Just as he upheld the spending ceilings, the pay as you go requirements, and the prohibition against moving funds from one part of the budget to another, he has kept his word to the people of West Virginia to send \$1 billion to them for their great and abiding needs.

A man of his word, a statesman. A great legislator, an outstanding leader of the Senate, a renowned parliamentarian, a historian, a loving father and grandfather, faithful husband, and ever-faithful friend, to me, and to his Nation which he has served for nearly a half century. That is ROBERT C. BYRD.

PROTECTION OF OUR OCEAN'S RESOURCES

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. BEREUTER. Mr. Speaker, decades of indiscriminate and reckless fishing practices have stripped many portions of the oceans bare. For example, the drift net fishing practiced by some Asian countries has been particularly damaging. The harvesting of tuna with purse seine nets has been equally devastating. In particular, Mexico's tuna fishing industry has been responsible for the slaughter of untold numbers of dolphins and other cetaceans.

The Marine Mammal Protection Act addresses these unsound fishing practices by barring imports of tuna caught by nations who exceed certain limits on dolphin deaths. Mexico has been cited under this act, and has gone to the GATT to protest the sanctions.

Mr. Speaker, this Member is a strong supporter of free trade, and I have consistently opposed the creation of artificial trade barriers. But a few nations should not be allowed to deplete the ocean's resources for the sake of larger tuna exports. It is important that the GATT act in an environmentally sound manner.

This member would ask to insert into the RECORD an editorial from the October 9, 1991, New York Times, entitled "Defending Dolphins." The editorial correctly urges Mexico to develop environmentally sound fishing practices. It is in Mexico's interest, and it is in the world's interest to do so. I commend this editorial to my colleagues.

DEFENDING DOLPHINS—WHY WON'T MEXICO TAKE STEPS TO STOP THE KILLING?

(By Homero Aridjis)

MEXICO CITY.—For reasons scientists do not understand, schools of yellowfin tuna swim below dolphin herds in the eastern tropical Pacific. In the late 1950's, fishermen started using huge circular purse-seine nets on the dolphins to catch the tuna below. Since 1959, more than seven million dolphins have died, a slaughter that the U.S. tuna industry initially, and the Mexican and Venezuelan industries subsequently, sought to

conceal and legitimize, with no real official protest.

In 1972, the U.S. mandated the gradual reduction and eventual elimination of the killing of dolphins by its tuna fleet. The Marine Mammal Protection Act was later amended to bar imports of tuna caught by nations that exceeded certain limits on dolphin deaths, and late last year a Federal court ordered an embargo on Mexican tuna under the law's provisions.

The Mexican Government challenged this ruling before the General Agreement on Tariffs and Trade, and in August a GATT panel said that sections of the U.S. law that led to the embargo constituted an illegal trade barrier. The ruling says a GATT member-nation has no right to obstruct trade detrimental to the environment beyond its borders.

If the full GATT council adopts this ruling, it could virtually invalidate many environmental treaties and conventions. Protection of tropical forests, migratory and endangered species, ocean ecosystems and the ozone layer, as well as control of toxic wastes and chemicals, would become impossible. And the dolphins would continue to be slaughtered.

At a meeting of the GATT General Council set for tomorrow, the Mexican Government, pointing to its recent measures to protect the dolphin, will ask for postponement (but not withdrawal) of the ruling. There is reason to believe that this decision was made in exchange for a promise from American officials to pressure Congress to weaken the Marine Mammal Protection Act. This is a dangerous precedent and one more reason why Congress should insist that environmental issues be an integral part of talks on the U.S.-Mexico free-trade pact.

Defending dolphins in Mexico has been a risky business. I have received death threats and been attacked in the press. Criticizing the slaughter is unpatriotic; the dolphin, after all, has no country, belonging to itself alone and to the earth. But the Mexican tuna industry is "patriotic" claiming that challenges to it are tantamount to criticizing the Mexican people.

President Carlos Salinas de Gortari recently announced a plan to protect dolphins and other marine species. Yet there are measures in his 10-point plan that raise concern. One stipulates that the Ministry of Fisheries oversee the placement of observers on tuna boats. The observers, however, are not required to limit the dolphin deaths, merely to count them. Another measure calls for a million-dollar research program to develop techniques to "reduce and abate" the dolphin deaths. But a solution already exists: stop the practice of setting nets on dolphins, as Ecuador and Panama have done.

Recently a European Parliament panel passed a resolution that would ban the European Community's import of tuna caught with purse seine nets. If Mexico agreed to phase out the deliberate encirclement of dolphins, it could keep this market and also recover the U.S. market. Killing dolphins has become a losing proposition: the market for tuna caught with purse seine nets has plummeted, partly because of the embargo.

Although a measure of the Mexican Government's plan states its intention of postponing tomorrow's discussion of the GATT ruling favorable to Mexico, tabling the ruling is not enough. Mexico should propose that GATT bylaws be reformed so that all trade decisions take environmental effects into account. Only then can the dolphin—and the global environment—be protected.

A TRIBUTE TO MITCHELL WOLFSON, JR.

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Ms. ROS-LEHTINEN. Mr. Speaker, I am pleased to recognize Mr. Mitchell Wolfson, Jr., who generously helped to build a new Miami Museum of Science and Space Transit Planetarium. In a campaign to commemorate the 500th anniversary of Christopher Columbus' discovery of America, Mr. Wolfson has committed to match \$1 for every \$3 raised by the Miami Museum of Science, the Historical Association of Southern Florida, and the Greater Miami Opera.

The Miami Museum of Science states that the building's new Mediterranean revival facade and colonnade have transformed the 31-year-old structure with the addition of columns, arches, tile walkways, and a beautiful loggia at the front entrance. Completion of this phase of the museum's renovation and expansion marks the initiation of the fundraising campaign for phase II, a three-story wing, which will house major exhibition and classroom space, a research library, and restaurant.

Mr. Wolfson is president of the Wolfson Initiative Corp. and the Novocento Corp., investment firms with interests in Miami and Genoa, Italy. In 1986, Mr. Wolfson established the Wolfsonian Foundation in Miami to support and promote scholarly research, conservation, education, and collection of decorative, design, and propaganda arts in the United States and abroad. The foundation oversees the Mitchell Wolfson, Jr. collection of decorative and propaganda arts, approximately 40,000 objects created between 1875-1945, primarily of American, British, German, and Italian design.

Mr. Wolfson is active in numerous philanthropic and civic organizations. As a trustee of the Greater Miami Opera, the Center for the Fine Arts, the Miami Design Preservation League, the Mitchell Wolfson, Sr. Community Foundation, Inc., the Dade Heritage Trust, and as a member of the International Council of Museums Committee for Fine Arts, Mr. Wolfson exemplifies an unselfishness for the greater good of the community at large.

A graduate of Princeton University, Mr. Wolfson serves on the advisory council of the Princeton Art Museum. Mr. Wolfson received his masters degree from the Johns Hopkins School of Advanced International Studies and serves on their advisory council.

Mr. Wolfson is the only male member of an all-women's club, the Foundlings Club, which he founded in 1986 on Miami Beach to promote the art of intelligent conservation.

I am extremely pleased to recognize Mr. Mitchell Wolfson, Jr. for the outstanding work he has accomplished not only for the community of south Florida, but for many all over the world. I would also like to recognize Mr. Russell Eting, the executive director of the Miami Museum of Science, for his continued success.

TAX REFORM PROVISION
DAMAGING NEW JERSEY ECONOMY

HON. ROBERT E. ANDREWS

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. ANDREWS of New Jersey. Mr. Speaker, I would like to insert the following article from the Sunday Record, entitled "Tax Reform Provision Damaging N.J. Economy" into the CONGRESSIONAL RECORD.

TAX REFORM PROVISION DAMAGING N.J.
ECONOMY

(By John Cali)

Reformers went too far when they abolished the deductibility of passive losses from rental real estate, says John Cali, founding partner of Cali Associates of Cranford.

The 1986 Tax Reform Act struck out at tax shelters, in part, by enacting passive-loss rules designed to stop people from purchasing tax losses from an unrelated business activity.

Cali supports legislation stipulating that the activities of a taxpayer "engaged in the real property business" will be treated, for purposes of passive-loss rules, the same as non-rental trade or business operations.

That legislation is also supported by the National Realty Committee. In testimony before Congress, the committee said:

"Because a passive rental loss may not be deducted against active real estate income, taxpayers engaged in the real estate business are essentially taxed on the gross income of their overall business operations and not on their net income as are other lines of business. This distorted taxation is clearly unfair."

Cali adds his voice to this issue in saying that these provisions of the tax code have been particularly damaging to New Jersey.

The federal Tax Reform Act of 1986 dealt a serious blow to the real estate industry, which today still suffers from a key provision of the law: its taxation of passive-loss properties.

But the impact of the passive-loss rule on real estate properties goes beyond the industry. It has also had a devastating impact on the economic health of the nation by drying up investment dollars for development.

Eliminated investment opportunities followed by an economic downturn severely impacted the real estate industry in New Jersey, which up until that point had served as a strong vehicle for the state's unprecedented economic growth.

The downturn of the real estate industry had a ripple effect that severely impacted the construction and related manufacturing industries, as well as labor and general employment statement.

Fortunately, Congress is moving to remedy the passive-loss provision. A bill (HR-1414) introduced recently by Congressman Mike Andrews, D-Texas, would restore the tax deductibility of passive rental real estate losses that was abolished by the 1986 Tax Reform Act. Many members of Congress recognize the significance of the legislation.

Already, the Andrews bill has 291 co-sponsors, more than a majority of the House. Moreover, over half of the Ways and Means Committee, the House's tax-writing unit, has signed on in support of the legislation.

Of the New Jersey congressional delegation, eight members have co-sponsored the bill: Robert G. Torricelli, D-Englewood; Frank Pallone Jr., D-Long Branch; Jim

Saxton, R-Vincetown; Dean A. Gallo, R-Parsippany-Troy Hills; Robert A. Roe, D-Wayne; Christopher H. Smith, R-Robbinsville; Bernard J. Dwyer, D-Edison; and Robert E. Andrews, D-Bellmar.

Under the passive-loss rules, long-term investment is discouraged and entrepreneurs are hindered from taking long-term risk. The law considers income from the management, leasing, development, brokerage, and construction of real property as active income.

Any losses from rental real estate ownership are classified as passive. Since a passive loss may be deducted against active income, developers are taxed on the gross income of their overall real estate business operations, and not on their net income as are other types of business operations.

This must be revised if developers are to generate investor interest in new projects, particularly in these difficult economic times. Andrews' proposal is a step in the right direction.

The Andrews bill will strengthen and stabilize property values and real estate markets throughout the country by encouraging longterm investment and reinvestment in real estate properties. It will also again spur the entrepreneur to take venture risks in the real estate industry by investing in development.

Furthermore, the bill will give taxpayers who spend more than half their time on real estate activities the right to demonstrate "material possession" and deduct under the same passive-loss rules that apply to taxpayers in all other professions.

The real estate industry has suffered from the 1986 Tax Reform Act. The Andrews bill, however, will go a long way toward helping the country emerge from its development slump by easing the tax burden on the industry.

This jump-start is vital to the return of a healthy real estate market capable of leading the nation out of recession. In New Jersey, the impact of the legislation would prime the pump of the state's economy, bringing investment dollars, construction, and jobs at a time when they are sorely needed.

SALUTE TO THE MIAMI SECTION
OF THE NATIONAL COUNCIL OF
JEWISH WOMEN: 70 YEARS OF
CARING AND SERVICE

HON. WILLIAM LEHMAN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. LEHMAN of Florida. Mr. Speaker, for 70 years, the members of the Miami Section of the National Council of Jewish Women have worked to help those in Dade County who have needed help the most: Children, the frail elderly, the homeless, immigrants new to this land, and those who have borne the brunt of physical disaster or personal tragedy.

Members of the NCJW are simply special people: Bright, caring, generous, well-organized, talented, and committed. They represent the very best in our community, for their focus is always on finding ways to help others. I know this from personal experience; My mother was a NCJW member in both Miami and Selma, AL.

[From the Miami Herald, Oct. 10, 1991]

JEWISH MOTHERS

(By Bea L. Himes)

Someone once described the National Council of Jewish Women as a coalition of Jewish mothers who have banded together to care for the world.

Judging from the good deeds the organization has done since its inception almost 100 years ago, the description fits well.

"Whenever there is a need, and Jewish women are called upon to help, we are there," said Theodora Skolnick, a member of the Miami Section.

"We are advocates, that's what we are," said Myra Farr as she rattled off a list of projects the National Council has sponsored. Among other things, the group has come to the aid of immigrants, opened thrift shops, begun a Headstart school for inner-city children and provided services to the elderly.

HUGE MEMBERSHIP

Now more than 100,000 strong in more than 200 American cities, the organization has 1,200 members in Miami and almost a million members worldwide.

The Miami Section, founded as the Daughters of Israel by Ida Cohen, is celebrating its 70th birthday this year. It will culminate with the 21st annual Child Care Luncheon on Dec. 11 at the Hyatt Regency. The Hannah G. Solomon award for outstanding community service will be presented. The award is named for the founder of the national organization in 1893 in Chicago.

The NCJW membership includes businesswomen and young professionals as well as single women, mothers and grandmothers. The organization means something special to each of them.

"As an involved member of NCJW, I have learned to be more aware of legislation which affects women, the elderly and children," said Farr, who lives in Bay Harbor Islands. "This makes me want to work toward the best legislation possible in these areas."

Farr has been a member 53 years. "I joined as a bride. They gave a free membership to brides in those days so I took advantage of it," she said.

HANDS-ON APPROACH

For attorney Nancy Luria-Cohen, 35, NCJW gives her the opportunity to be a "working" member in a worthwhile organization.

"A lot of times you give financial support to organizations that you don't feel 100 percent involved in," Luria-Cohen said. "This organization gives me the opportunity to have hands-on involvement in areas that I feel are very important, such as families, women's reproductive rights, constitutional rights and education."

The organization's goal is to "seek out the unmet needs in the community and meet them," said Annette Zipper, president of the Miami Section. "We get more out of serving than what we give."

She said those who benefit from the organization include people of all races and ethnic backgrounds.

In 1973, the group started a day-care center in Larchmont Gardens, a public housing project. Six years later, it started the Crisis Nursery and a day-care program for Russian immigrant children.

In addition, the women have helped immigrants of all nationalities by providing clothes, housing and work, Farr said.

"The main thing is we learn so much. This organization is a school for community action," she said.

NATIONAL 4-H WEEK

HON. WILLIAM H. NATCHER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. NATCHER. Mr. Speaker, once again it is a privilege to join with the members of 4-H as they celebrate National 4-H Week. This year's theme is "4-H: The Difference We Make."

Over 5.8 million youth participated in 4-H youth development programs last year—an increase of 5.6 percent over the previous year. Kentucky, with 3,515 4-H Clubs, had the second-highest number of clubs of any state, and had the highest number of youth in 4-H instructional TV of any State, with 11,032 participating.

Individual members enroll in one or more organized projects each year. The average in 1991 was 1.8 projects per member. The most popular projects were in the areas of animals and poultry, food and nutrition, natural resources, individual and family resources, and mechanical sciences.

Major efforts were begun to expand the extension's outreach to youth at risk who are most vulnerable because of poverty, lack of parental and community support, and negative peer pressure. These efforts include 69 local program sites. Approximately one-third of these sites are providing badly needed high-quality school-age child care; another third are emphasizing scientific, technological, and reading literacy; and the balance are forming broad coalitions of youth-serving agencies and concerned groups to jointly address the problems of youth at risk. On September 16, a Youth at Risk Summit II satellite teleconference was conducted, involving not only thousands of 4-H youth, volunteers, and staff, but representatives of many other youth-serving agencies. The teleconference provided updates on developments and progress in Youth at Risk programming since the Youth at Risk Summit held in Washington, DC last year.

4-H programs increasingly are developed in partnership with other agencies, national associations, and private sector partners. One such example is a new nationwide 4-H Environmental Stewardship now being developed by the National 4-H Council, Extension Service, USDA, and five major partner corporations. Most new 4-H efforts, such as this one, address major societal issues.

Administrators of the Cooperative Extension Service in my home State of Kentucky have always led efforts to make sure that all interested youth in the State could benefit from the many educational programs offered. As a further step to facilitate that effort, this past year they changed the title of the professional staff members working with youth programs from County Extension Agent for 4-H to County Extension Agent for 4-H/Youth Development.

During fiscal year 1991, Kentucky 4-H involved 226,634 young people through the many and varied educational programs offered. A total of 42 percent of the potential youth ages 9 through 19 participated in some aspect of the 4-H program. The youth were active in 8,212 4-H clubs, special interest, and school enrichment units. They were assisted by 28,658 volunteer teen and adult leaders.

The county programs in the Second Congressional District of Kentucky, which I have the privilege of representing in the Congress, reported 33,955 youth involved in 1,323 clubs/units that were led by 4,615 volunteer leaders. A total of 43 percent of youth ages 9 through 19 were involved in some aspect of the 4-H program.

Key leaders in Kentucky 4-H are from the Second Congressional District. Bill Corum of Meade County just completed his term as president of Friends of Kentucky (the State foundation). He now moves on to an immediate past president term as a member of the executive committee. Mrs. Preston (Linda) Jeffers continues as secretary/treasurer of Friends. Romanza Johnson of Warren County serves on the board of directors. Mrs. James (Margie) Brookshire of Breckinridge County is a member of two very important State advisory groups, the Kentucky 4-H State Leaders Council and the State Teen Council, and she also serves on the National Extension Advisory Committee. Keith Rogers of Hardin County is the immediate past president of the State Leaders Council and he now serves on the executive committee. Keith Rogers, Bill Skinner of Warren County, Russell Lemons of Hardin County, and many others have established a 4-H alumni organization for Kentucky. Roberta Hunt, County Extension Agent for 4-H/Youth Development in Washington County, was recently elected president of the Kentucky Association of Extension 4-H Agents.

The following 4-H'ers from the Second Congressional District of Kentucky won State championships in project records: Jennifer Crowley (Davies County) in consumer education, Jennifer Bryant (Davies County) in home environment, Bart Jones (Warren County) in swine, and Jennifer Edmundson (Warren County) in career exploration.

The following volunteer teen and adult leaders were recognized as area champions through the Feltner 4-H Leadership Recognition program: Minnie Swack (Warren County) and Judy Taul (Breckinridge County)—adult; Greg Swack (Warren County), Kimberly Akins (Washington County), and Lee Anne Day (Spencer County)—teen. Kimberly Akins was selected as one of five teens to be honored as a State winner in the program.

I would like to recognize the following 4-H'ers who were winners of the 4-H exhibits and activities held at the Kentucky State Fair: Allen County—Leslie Brown, Beth Chastain, and Kristy Erwin; Barren County—Stephen Gardner, Lindsay Gardner, and Casey Pedigo; Breckinridge County—Patty Jo Taul; Bullitt County—April Whittis; Davies County—Jennifer Bryan, Jennifer Crowley, Justin Morgan, Aaron Wilkerson, and Margie Zoglmann; Grayson County—Molly Cain and April Patterson; Hancock County—Clint Basinger; Hardin County—Phillip Cochran, Jarrod Goff, Mike Gunter, John Heitzman, Eric Offutt, John Poskin, and Amanda Ramer; LaRue County—Patrick Durham, Luke French, Joseph Gentry, Misty Gentry, Matthew Rock, and Jonathan Spratt; Marion County—Susan Courtwright, Tina Miles, Amanda Lee, and Danielle Ford; Meade County—Meredith Staton and James Gavin; Nelson County—Brian Reed, Jacob Miller, Amanda Raizor, Beth McIntyre, Alice Dickerson, Aaron Reding, Jeannie Greenwell,

and Paula Lundy; Spencer County—Ryan Bivens, Sara Bell, Heather Herndon; Warren County—Bart Jones, Jason Cole, Danielle Harnest, Brooke Pearson, and Amanda Cole; and Washington County—Erin Remington, Anne Davis, Kim Akins, Tige Akins, and Shannon Edelen; along with the Glendale Children's Home and Hardin County for the best county exhibit—swine.

Also, the following young people from the Second Congressional District were top winners in the Kentucky 4-H Speech and Demonstration Contest: Speech—Margaret Haydon (Washington County), Stephanie Murphy (Washington County), Jeri Fields (Warren County), and Beckie Rasdall (Warren County); Demonstrations—Justin Morgan (Davies County), Jason Cole (Warren County), Amanda Cole (Warren County), Alice Ann Gentry (Warren County), Nathan Smith (Spencer County) and Heather Ploeg (Davies County).

Fifteen 4-H'ers from the Second Congressional District participated in the American Heritage Program. They were among 116 teens and adults who traveled to Washington, DC, and stayed at the National 4-H Center while studying and learning more about citizenship and our Government. Also, nine 4-H'ers and their families in the Second Congressional District served as hosts for Japanese youngsters through the LABO Exchange Program.

At this time I would like to commend all of those associated with 4-H programs not only in the Second Congressional District and the Commonwealth of Kentucky, but throughout the United States, for their past achievements, and I want to wish them continued success in all their future endeavors.

OPEN SEASON ON CLARENCE THOMAS

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. EMERSON. Mr. Speaker, in the ongoing effort of the American public, indeed the American Congress, to gain perspective on the controversy relating to action or inaction in the other body, re Judge Thomas' nomination to be an Associate Justice, the article following—written by Juan Williams of the Washington Post—is an important, very important, piece of reading.

[From the Washington Post, October 10, 1991]

OPEN SEASON ON CLARENCE THOMAS

(By Juan Williams)

The phone calls came throughout September. Did Clarence Thomas ever take money from the South African government? Was he under orders from the Reagan White House when he criticized civil rights leaders? Did he beat his first wife? Did I know anything about expense account charges he filed for out-of-town speeches? Did he say that women don't want equal pay for equal work? And finally, one exasperated voice said: "Have you got anything on your tapes we can use to stop Thomas."

The calls came from staff members working for Democrats on the Senate Judiciary Committee. They were calling me because

several articles written about Thomas have carried my byline. When I was working as a White House correspondent in the early '80s, I had gotten to know Thomas as a news source and later wrote a long profile of him.

The desperate search for ammunition to shoot down Thomas has turned the 102 days since President Bush nominated him for a seat on the Supreme Court into a liberal's nightmare. Here is indiscriminate, mean-spirited mudslinging supported by the so-called champions of fairness: liberal politicians, unions, civil rights groups and women's organizations. They have been mindlessly led into mob action against one man by the Leadership Conference on Civil Rights. Moderate and liberal senators, operating in the proud tradition of men such as Hubert Humphrey and Robert Kennedy, have allowed themselves to become sponsors of smear tactics that have historically been associated with the gutter politics of a Lee Atwater or crazed right-wing self-promoters like Sen. Joseph McCarthy.

During the hearings on his nomination Thomas was subjected to a glaring double standard. When he did not answer questions that former nominees David Souter and Anthony Kennedy did not answer, he was pilloried for his evasiveness. One opponent testified that her basis for opposing him was his lack of judicial experience. She did not know that Supreme Court justices such as liberal icons Earl Warren and Felix Frankfurter, as well as current Chief Justice William Rehnquist, had no judicial experience before taking a seat on the high court.

Even the final vote of the Senate Judiciary Committee on whether to recommend Thomas for confirmation turned into a shameful assault on Thomas by the leading lights of progressive Democratic politics. For example, in an incredibly bizarre act, Chairman Joseph Biden stood up after a full slate of testimony and said Thomas would make a "solid justice," but then voted against him anyway.

At the time of the vote, two of the committee's Democrats later explained to me, the members of the Judiciary Committee figured it would make no difference, since Thomas had the votes to gain confirmation from the full Senate. So, they decided, why not play along with the angry roar coming from the Leadership Conference? "Thomas will win, and the vote will embarrass Bush and leave [the Leadership Conference] feeling that they were heard," explained one senator on the committee.

Now the Senate has extended its attacks on fairness, decency and its own good name by averting its eyes while someone in a position to leak has corrupted the entire hearing process by releasing a sealed affidavit containing an allegation that had been investigated by the FBI, reviewed by Thomas's opponents and supporters on the Senate committee and put aside as inconclusive and insufficient to warrant further investigation or stop the committee's final vote.

But that fair process and the intense questioning Thomas faced in front of the committee for over a week were not enough for members of the staffs of Sens. Edward M. Kennedy and Howard Metzenbaum. In addition to calls to me and to people at the Equal Employment Opportunity Commission, they were pressing a former EEOC employee, University of Oklahoma law professor Anita Hill, for negative information about Thomas. Thomas had hired Hill for two jobs in Washington.

Hill said the Senate staffers who called her were specifically interested in talking about

rumors involving sexual harassment. She had no credible evidence of Thomas's involvement in any sexual harassment, but she was prompted to say he had asked her out and mentioned pornographic movies to her. She rejected him as a jerk, but said she never felt her job was threatened by him, he never touched her, and she followed him to subsequent jobs and even had him write references for her.

Hill never filed any complaint against Thomas; she never mentioned the problem to reporters for The Post during extensive interviews this summer after the nomination, and even in her statement to the FBI never charged Thomas with sexual harassment but "talked about [his] behavior."

Sen. Paul Simon, an all-out opponent of Thomas, has said there is no "evidence that her turning him down in any way harmed her and he later recommended her for a job [as a law professor]." Hill did say that because Thomas was her boss, she felt "the pressure was such that I was going to have to submit . . . in order to continue getting good assignments." But by her own account she never did submit and continued to get first-rate assignments.

The bottom line, then, is that Senate staffers have found their speck of mud to fling at Clarence Thomas in an alleged sexual conversation between two adults. This is not the Senate Judiciary Committee finding out that Hugo Black had once been in the Ku Klux Klan (he had, and was nonetheless confirmed). This is not the Judiciary Committee finding that the nominee is an ideologue incapable of bringing a fair and open mind to the deliberations of the court. This slimy exercise orchestrated in the form of leaks of an affidavit to the Leadership Conference on Civil Rights is an abuse of the Senate confirmation process, an abuse of Senate rules and an unforgivable abuse of a human being named Clarence Thomas.

Further damaging is the blood-in-the-water response from reputable news operations, notably National Public Radio. They have magnified every question about Thomas into an indictment and sacrificed journalistic balance and integrity for a place in the mob. The New York Times ran a front-page article about "Sexism and the Senate" that gave space to complaints that only two of the 100 members of the Senate are female. The article, in an amazing leap of illogic, concluded that if a woman had been on the Judiciary Committee, more attention would have been given to Professor Hill's report. But attention was given to what she said. A full investigation took place. Why would a woman senator not have reached the conclusion that what took place did not rise to the level necessary to delay the vote on Thomas in the committee or to deny him confirmation?

To listen to or read some news reports on Thomas over the past month is to discover a monster of a man, totally unlike the human being full of sincerity, confusion, and struggles whom I saw as a reporter who watched him for some 10 years. He has been conveniently transformed into a monster about whom it is fair to say anything, to whom it is fair to do anything. President Bush may be packing the court with conservatives, but that is another argument, larger than Clarence Thomas. In pursuit of abuses by a conservative president the liberals have become the abusive monsters.

Sen. Charles E. Grassley said on the Senate floor Tuesday that the smears heaped on Thomas amounted to the "worse treatment of a nominee I've seen in 11 years in the Sen-

ate." Sen. Dennis DeConcini said it "is inconceivable, it is unfair and I can't imagine anything more unfair to the man." And Sen. Orrin G. Hatch described the entire week's performance as a "last-ditch attempt to smear the judge."

Sadly, that's right.

A TRIBUTE TO HAYNES RICE

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. DELLUMS. Mr. Speaker, I would like to take this opportunity to pay tribute, on the occasion of his passing, to a truly outstanding American citizen, Mr. Haynes Rice. Haynes Rice's life reflects his selfless commitment to the reform and improvement of the American health care system. He was without doubt one of our country's most valuable assets in the struggle for quality medical care.

Mr. Rice passed away on August 2, 1991, leaving a wife of 36 years and two children. Born in Knoxville, TN, on January 10, 1932, Haynes Rice would receive his degree in accounting from West Virginia State College. After his graduation, Mr. Rice received his military commission and served our Nation for 2 years as a 1st lieutenant in Korea and Hawaii.

His professional life began with his employment at Kate Bitting Reynolds Memorial Hospital in Winston-Salem, NC. It was here that Mr. Rice's administrative brilliance was first recognized. He was sent to the University of Chicago where he became perhaps the most outstanding student in hospital administration that the university had ever seen. His dedication to reform continued to grow over the years. It was not always easy to maintain this level of dedication in the face of a problem of such massive proportions. But his frustration with the indifference of this Nation to the care of the less fortunate never managed to diminish his courage or his determination to make real progress.

His career in health care administration would span more than 35 years. Among countless other executive positions and awards for excellence, Mr. Rice served as the chief executive officer for 6 hospitals, was appointed to the adjunct faculty of 10 graduate programs and wrote numerous articles addressing the topics of the minority health care professional and health services for the poor. In July 1991, Mr. Rice received the Award of Honor from the American Hospital Association. His personal concern for the black and minority health professional was so sincere, and his efforts to promote their educational opportunities so monumental, that it is not unrealistic to say that there is not one successful black health care executive today whose life has gone untouched by Haynes Rice.

But it would be impossible to measure the impact that Haynes Rice's life had upon the people of this Nation. His presence is still being felt through the myriad community programs he helped begin and the countless men and women whose lives he touched personally and directly. Mr. Rice is remembered as a hero in communities from Harlem to Washington, DC.

Mr. Rice's most recent work at Howard University Hospital was representative of the depth of his devotion to the care of those who could not care for themselves. His outspokenness on the issue of abandoned babies led to the establishment of a home for boarder babies sponsored by Howard University Hospital in 1991. It is fitting that great tradition begun by Haynes Rice will be carried on by this generation of new lives. His greatest monument will be the living fact of their salvation and of their second chance.

**DON'T DISMANTLE THE JONES
ACT**

HON. WALTER B. JONES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. JONES of North Carolina. Mr. Speaker, the American Waterways Operators is a leading maritime trade organization which speaks for the inland and coastal tug and barge industry. Its president, Mr. Joe Farrell, has frequently testified before Congress, and his recommendations are always received respectfully by legislators. On October 4, he authored the following article in the *Journal of Commerce*. I commend its message to the attention of Members of the House.

DON'T DISMANTLE THE JONES ACT
(By Joe Farrell)

The International Trade Commission issued a report on Sept. 19 claiming the American consumer would benefit by somewhere between \$4.2 billion and \$10.4 billion annually if waterborne transportation between U.S. ports were opened up to foreign competition.

Under present U.S. laws, only vessels that are owned by U.S. citizens, built in U.S. shipyards and manned by U.S. crews can carry passengers and freight between points in the United States. Foreign ships are prohibited from providing this service. This policy, known as cabotage, was created in the maritime industry by the 1920 Jones Act. The ITC report implies that everyone would be much better off if foreign vessels, crewed by foreign nationals, took over the waterborne domestic trade of the United States.

Just for starters, we as taxpayers must question the merits of a government study that cannot tie down the putative benefits to American consumers more precisely than the breathtaking range of \$6.2 billion. Such a range is like a real estate agent trying to sell a house that he describes as costing somewhere between \$150,000 and \$450,000. One would have to wonder about both the house and the agent.

The cabotage laws of the United States were not enacted in the first place to benefit the American consumer. In fact, the preamble to the Jones Act states that "... it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine . . . as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by the citizens of the United States."

Our cabotage laws, like the cabotage laws of all the maritime nations in the world, are in place to protect the national security of the United States and to foster benefits for the U.S. economy. The ITC would have some

parties counting their money at too great a risk to all.

One need look no further than this year's Persian Gulf war to see the compelling, contemporary value of the Jones Act. After a good deal of scrambling, the United States finally begged or borrowed enough ships to transport over 90% of cargoes needed for the war effort. (Some of those ships didn't work very well, but never mind.) In the end, the U.S. government had severe problems manning those vessels with trained seamen.

Putting trained people on merchant vessels in time of war will always be a major hurdle; in a conflict more protracted than the Persian Gulf war, U.S. tug and barge operators can provide a rich natural reserve of trained seaman. While not trained for trans-oceanic commerce, of course, they are experienced in applicable maritime skills that have critical value in time of national emergency. And there are more on-board jobs in the barge and towing industry than in any other sector of the U.S. maritime industry. If the Jones Act disappeared, so would the lion's share of our ready reserves.

The Jones Act is arguably the only U.S. maritime promotional statute that has worked. The Jones Act fleet—a fleet, incidentally, which receives not one penny of government subsidy—is thriving. No keener competition can be found in any sector of American business and commerce than one finds in the tug and barge industry, scores of towing companies operating on the inland rivers and along the coast of the United States vie with one another for cargoes. That competition helps to explain why this industry carries 15% of all U.S. intercity freight for only 2% of the nation's freight bill.

Not to be forgotten in this debate is that American citizens have invested billions of dollars in this fleet with the good faith understanding that the Jones Act would remain intact. If the Jones Act disappeared, so would that competition, so would that faith. So would U.S. flag vessels, so would an American citizen merchant marine.

There is also a new and powerful reason to keep the waterborne domestic trades of the United States in the hands of American citizens. We are determined to preserve and protect or precious environment: the wild-fowl habitat, pristine shorelines and vast marine recreational areas. Merchant seamen from foreign lands are steeped in their own rich cultures. Yet, they often are unfamiliar with the language and culture of the United States. The majority have only scant knowledge, if any, of complex U.S. and state environmental laws and regulations. Opening the Jones Act trades would allow foreign crews—in vessels built below U.S. standards and owned by citizens of other lands—to operate beyond the reach of U.S. jurisprudence.

Foreign crews, manning vessels built to different standards, would ply the waters of the Chesapeake Bay, Long Island Sound, the Upper Mississippi River and the Columbia River, for example. Such action could grant them a new version of diplomatic immunity—from marine safety and environmental responsibility.

Xenophobia? I think not. Would we willingly turn over the ownership and operation of our police forces or the maintenance of U.S. commercial aircraft to men and women from distant foreign lands? We are indeed a global village, but it will always make sense for some things to repose with citizens of their own land. Let's not be so foolish as to sacrifice what is crucial for a not-very-well-defined but surely lesser benefit.

**UNITED STATES RELATIONS WITH
THE SOVIET UNION AND THE RE-
PUBLICS**

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. HAMILTON. Mr. Speaker, on October 2, 1991, the Under Secretary of State for Economic and Agricultural Affairs and Counselor of the Department of State, Mr. Robert B. Zoellick, testified before the Subcommittee on Europe and the Middle East of the Committee on Foreign Affairs concerning United States policy toward the Soviet Union. His written statement, "Relations of the United States With the Soviet Union and the Republics," is a thorough review of current United States policy, and I commend it to my colleagues. The text of Mr. Zoellick's testimony follows:

STATEMENT OF ROBERT B. ZOELICK

Mr. Chairman and Members of the Committee: I am pleased to have this opportunity to report on recent events in the Soviet Union and the republics.

I will stress five points:

First, the events of August 1991 in the Soviet Union constitute one of the undeniable watersheds of our age. As President Bush stated last week, "[t]his revival of history ushers in a new era, teeming with opportunities and perils." And the President took a major initiative in setting the course for this new age last Friday through his announcement of bold steps and proposals to reduce the nuclear threat.

Second, power has shifted almost completely to the republics of the Soviet Union; the fundamental question now is whether a new form of cohesion among them is possible or desirable.

Third, democratic reformers are now in key positions, but myriad threats lurk around them. Their success is by no means assured.

Fourth, in this new post-Cold War era, the U.S. must continue to be deeply engaged with the Soviet Union and the republics—on matters of internal political evaluation, economic reform, and foreign and security policy.

Fifth, we need a sensible and realistic basis for assessing what constitutes successful policy in this time of transition.

A NEW ERA OF HISTORY

Government officials are frequently accused, fairly I suppose, of overdramatizing changes in policy or events. Not this time. We have leapt into a new era of history.

Consider the situation in the wake of the failed Apparatchik Counterrevolution. The Russian Empire, and then the Communist Empire that succeeded it, have been among the great forces that determined the history of Europe, Asia, and indeed the world, for the past three centuries. That empire is now shattered. The Communist Party that ran it is banned or suspended in its homeland, its assets have been taken away, and it is under investigation. A country that reaches across 11 time zones is in the throes of political, economic, and social upheaval.

It may be many years before this new age settles into its own pattern. Even the first label in common usage—the post-Cold War era—reflects the fact that to date its single most dominant characteristic is the abandonment of the Cold War that came before. (Indeed, a former colleague recalled the

story of the Chinese historian who, when asked recently to comment on the historical consequences of the French Revolution, responded, "it is too soon to tell.")

In grasping for historical analogies, it is natural to seize on other lost, multinational empires—for example, the Austro-Hungarian or the Ottoman. Like earlier multinational empires that fragmented, our longstanding antagonist is struggling to determine how the pieces might relate to one another. But I would also like to draw attention to another point of comparison: the dangers and opportunities that the United States faced in the aftermath of World War II, when we reached out to former enemies, Germany and Japan, helping to establish them as democratic market economies and allies. Now the Cold War has ended. Many of the new leaders in the Soviet Union and the republics are looking to the United States to help guide them into becoming contributors in the democratic community of nations.

Last week at the United Nations, President Bush referred to the challenges of building peace and prosperity as we face this "resumption of history." Last Friday, the President outlined steps we will take, and others that we propose, to stand down from the tense nuclear confrontation with the Soviet Union—a state of imminent danger that my generation had etched onto its early consciousness in 1962 and had expected to have persist through its existence.

The new security environment that President Bush hopes to establish also has enormous political implications for the future. As Secretary Baker stated this June in Berlin, "the door to the Euro-Atlantic community is open. But only the Soviets can decide to step over the threshold."

The agents of the Old Soviet regime did not want to take that step. But ironically, their actions in August to backtrack ended up toppling them and sending the Soviet Union and its republics stumbling ahead. The direction is right, but there are serious questions as to whether new leaders of reform can keep their footing.

The reformers are attempting to transform the traditional institutions of repression in the Soviet Union. Their effort with the KGB and the Army may offer one of the most startling examples of the Soviet Union's metamorphosis.

Vadim Bakatin, the new head of the KGB, told us in September that he intended to cut back many of the KGB's activities and establish those that remain on a legal foundation. Bakatin was particularly interested in learning more about the legal and oversight systems that Western countries have developed for their intelligence services. Nor were these just musings; he demonstrated the detailed knowledge he had already obtained about Western legislation on wiretaps. Bakatin also seemed eager to strengthen exchanges with the CIA. While our anti-terrorism discussions with the KGB have already broken new and potentially beneficial ground, Bakatin's interest clearly extended further. He wanted to draw from the experience of Western intelligence agencies to establish the KGB as a responsible institution in the new Soviet society.

One important element of Bakatin's strategy is to bring in new people and then build up new leaders who are committed to reform. The new democrats were deeply troubled by the quiescence of many officials during the August coup.

The new ways have dangers of their own, of course. One Russian told us that when the

new head of the KGB for a large city asked what he was supposed to do, he was told that one task alone would ensure success: He was to make sure his democratic bosses were alerted in advance of any other coup attempt.

The new Minister of Defense, Air Marshal Shaposhnikov, also outlined his intention to redirect a defense establishment that for decades had been a pillar of the totalitarian state. He is seeking to build upon the military's pride in being an army of the people. At critical moments in Russian and Soviet history, the military became the embodiment of the Motherland. Shaposhnikov is proud that during the critical moments of August, this army of the people would not fire on them.

But Shaposhnikov is not content with an army guided by its heart; he wants to support these impulses by winning over the minds of soldiers and civilians alike. His strategy, like Bakatin's, is to establish a Defense Ministry and military subject to civilians and the rule of law.

Shaposhnikov intends to reduce the size of his forces and to increase the role of volunteers. He plans to transform the military to reflect a new state of center-republic relations. He speculated about working out legal arrangements with each republic, establishing clearly that the military's role would be to defend, and not to interfere, in the republics. Indeed, his questions about U.S. stationing and status of forces arrangements abroad appeared to be a search for appropriate models.

I was struck particularly by Shaposhnikov's interest in the U.S. Code of military justice and our military police. He wants to build public legitimacy for the Soviet Army. And he believes that to do so, the civilian public must trust that the military adheres to the rule of law in its own internal affairs as well as toward the society at large. Given all the demands on Shaposhnikov's time, his attention to this means of building the military's place in a civilian society suggested to me that a very new man is in charge.

The democrats hope to transform the old institutions of repression into what they describe as a "safety net" for democracy. They can build on the fact that during the August coup many people in the security apparatus simply refused to act against democratic leaders or, just as important, against the people in the streets. Nevertheless, it will take time for the new thinking to be accepted by all the old rank and file.

It is too early to know whether these courageous leaders will succeed. If this is indeed a second Russian revolution, we must also face up to the fact that the furies of revolutions have frequently created consequences that were impossible to foresee or control. The forces now unleashed in the Soviet Union could lead to disintegration and conflict that could plague Eurasia and the world for decades to come. One or more autocrats may seek to impose dominating authority at a terrible price, as Lenin was able to do after the Civil War period. Whatever the course of the future, we can shape it only if we recognize that the policy framework that we have used for the Soviet Union over the past 40 years is now history.

THE GREAT POWER SHIFT: THE DOMINANCE OF THE REPUBLICS

Perhaps the most striking characteristic of the post-coup environment is the dramatic shift of power from the center to the republics. Almost overnight, the key question about the political compact has been trans-

formed: Before August, we asked what would be the division of political power between the center and the republics; today and question is whether cohesion among republics is possible.

1. From the Center to the Republics to * * *

Mayor Popov of Moscow placed this dramatic development within a context. He outlined three different stages of political contract and related them to the reform impulse. In the first, Gorbachev had tried to reform society from the center. Like Peter the Great or Alexander II, the other great Russian modernizers who preceded him, Gorbachev had launched an era of reform from above.

But as the reforms met resistance from the established order, an order based on the entrenched power of highly centralized institutions, some Soviets—Russians and non-Russians—speculated that the route to reform would have to run through the individual republics. But this second alternative, while theoretically possible, also confronted many obstacles. It divided the combined force of reformers. Nationalism, and old animosities, at times superseded the drive for democracy and market reforms. Moreover, the republics were linked by a highly centralized industrial structure, and even if the old economic structure could be overcome, autarkic republics would forgo the potential benefits from higher degrees of integration.

Popov's third stage was a division of labor between the center and the republics. The first effort to legally establish such an allocation of power came from the center earlier this year when Gorbachev negotiated the one-plus-nine agreement—Gorbachev plus nine republic leaders—that was to lead to the new union treaty. Indeed, it was the prospect of signing that treaty in late August that probably led the coup plotters to act when they did. But in the aftermath of the coup, Popov concluded, only what he labels a "nine-plus-one arrangement" is possible. By this he means it is up to the independent republics to determine what authorities they will cede to a new center.

Another Russian reformer was even more explicit about the loss of central authority, at least in economic matters. The concept of one-plus-others is gone, he said. The question now is whether they'll even have a zero-plus-nine or -twelve or some other number. Thus, he believes that any common economic authority will have to be newly created by the republics.

2. A Crisis of Legitimacy

I suspect that the underlying problem of fragmentation runs even deeper than a shift of power to the republics. We are already seeing signs that subordinate groups or regions within the republics are questioning republican authority as well.

In testimony I gave to the Senate Foreign Relations Committee in February of this year, I stated that the fundamental problem confronting all leaders and governments in the Soviet Union is to overcome a crisis of legitimacy. As perestroika and glasnost gave people the freedom to question, as the grip of fear loosened, people would not follow a leadership that had no right to govern. That is still a primary problem today. It is true for both the center and many republics.

During the winter and early spring, the Soviet leadership tried to cope with the crisis of legitimacy by restoring order. They falsely equated order with political legitimacy. And for them, order depended on authority.

But equating legitimacy with order and authority turned out to be a backward formula. The heavy hand of authority could not

restore order in the Baltics, at least not at a price the leadership was willing to pay. Nor could authority reorder a broken down economy or currency. The leadership failed to reestablish the power of the center through national institutions like the Army, the KGB, and the Communist Party. Then when Gorbachev tried to reestablish political legitimacy based on a new Union Treaty linked to the development of a new constitution and elections, the old Communist boys made their last gasp through the coup. The brave and successful resistance mobilized by President Yeltsin around the Russian Republic doomed the old center that Gorbachev had sought to maintain through a new union treaty.

So we are now in a period when the republics are seeking to establish their legitimacy. They have declared independence. Now they must determine what independence means for their people and the relation of republics to one another.

We have also seen that one cannot necessarily equate republics with reform. After decades of a Cold War waged against the totalitarian center, some assumed that those within the Soviet Union who opposed this center must also stand for the democratic principles the center crushed. And in fact, as the old central authorities delayed or retreated, many republics had become the driving forces for reform. But we have already seen, in a relatively short time, that the republics also have a mixed record. Some leaders are using the disintegration of central authority to maximize their own power at home. Others use violence and intimidation against those who challenge them and to threaten minorities within their republics.

We need to be careful not to examine the development of republican independence solely through the lens of our conceptions of the nation-state. Nationalism, one of the momentous movements of the 19th and 20th Centuries in the rest of the world, has followed a somewhat different course in the Soviet Union. Russian nationalism has existed for some time, but it had been harnessed to serve the ends of Soviet Communism. Russian chauvinism had antagonized many other peoples in the USSR. Now the national movements in the border republics have been freed to define their own national characters and their origins in culture, literature, language, territory, and history; they are still evolving and still exploring how they relate to one another. While many of the nationalisms have old and distinguished lineages, the relation between nationalism and the state is frequently not yet well defined.

Moreover, the national movements do not fit neatly within republic boundaries. One in five Soviet citizens lives outside his or her ethnic republic or area. So there is substantial potential for friction and conflict between republic governments and national movements.

Ultimately, political legitimacy, and the stability that it offers, must be based on consent of the governed. That's one reason why President Yeltsin, one of the few leaders elected by his people, has a particularly important role to play. Republican independence must be complemented by democracy.

Yet the rule of the majority must respect the rights of the minority. As Thomas Jefferson stated in his First Inaugural Address: "Though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; the minority possess their equal right, which equal laws must protect, and to violate which would be oppression."

3. Cooperation Among Independent Republics

The newly independent republics also need to recognize the benefits of integrating or coordinating structures. This is not the same as seeking a recentralization of power. As former Secretary of State Kissinger pointed out recently in a thoughtful op-ed piece, the highly centralized Russian state—through different leaders, ideologies, and centuries—has relied on hegemonic armed forces and outward expansion to try to dominate at least two continents. But autarkic republics, suspicious and perhaps even hostile to one another, pose dangers, too.

In particular, cooperation among republics may be important in:

Avoiding ethnic discord and even civil war; Enhancing security, particularly through the central command and control of nuclear weapons; and

Strengthening the prospects for a successful economic reform program.

Given the ethnic patchwork of the Soviet Union, some basic cohesion may be important to stave off disintegration. The importance of some cooperation among the republics was driven home to us by our conversations a few weeks ago with Aleksandr Yakovlev, Eduard Shevardnadze, and other reform leaders. They were particularly anxious about the Ukraine. Of the 52 million people in the Ukraine, an estimated 11 million are Russian; many have intermarried. While Yakovlev and Shevardnadze acknowledged the fact of the Ukraine's independence, they also pointed out the danger that if the Ukraine totally disassociates itself from Russia, large Russian minorities in places like Kharkov, the Donbas, Odessa, and the Crimea may try to secede. If the Russians in the Ukraine leave, they continued, the Russians that comprise 38 percent of the population in Kazakhstan may decide they, too, wish to restore ties with Russia. A divided Kazakhstan could spur the rise of a new Islamic tide across the southern reaches of the Soviet Union. The two reformers concluded this could have far-reaching spillover effects—not only on the Islamic neighbors, but also in nearby multi-ethnic nations like India.

This may well be an overly fearful picture. But these men are serious observers, and their warnings bear careful reflection on the part of all sides. It will be particularly important for Russian leaders to demonstrate to non-Russians that they will be able to receive fair treatment and can exert equitable influence in any arrangements that are struck.

Some cohesion is important for security and stability, too. Central control of nuclear forces is critical to preventing proliferation. Eurasian stability also will not be served by the creation of large, independent republican armies. Nor can economic reform be pursued by small states striving to build military establishments.

Finally, there are significant economic reasons for some common policies among republics. As the United States has demonstrated for over 200 years and as the Western Europeans have also learned, there are substantial economic benefits to a large internal market unhindered by trade barriers. Indeed, it is vital that the reform leaders finally move ahead with a serious, comprehensive program for a market economy, and that effort will be far harder if the republics cannot agree on common economic policies.

Robert Hormats elucidated this point in his recent testimony before the Senate. One of the legacies of Stalin and his successors is a highly interdependent structure of produc-

tion. Hormats reported that one recent Soviet study examining 6,000 different products determined that about three quarters were supplied by just one producer. Soviet industrialists told him that single factory monopolies tend to be the rule, not the exception, and that they account for an estimated 30-40 percent of industrial output. The CIA has pointed out that "the Soviet Union's entire output of potato, corn and cotton harvesting equipment comes from single factories—all in different republics."

This extraordinary economic monopolization already makes price decontrol exceedingly difficult; if the republics do not maintain open trade and agree to instituting reforms at a roughly similar pace, the already substantial dislocations will intensify. Similarly, the development of a macroeconomic stabilization program—to establish some steady value for a currency—depends on sound monetary and fiscal policies. These policies depend, in turn, on agreements to cut spending, collect revenues, and control the money supply. Therefore, one of the critical challenges facing the people of the Soviet Union is how to strike the appropriate balance between smaller, independent political units and cohesion that recognizes economic and political interdependencies. This is not a new question, and the leaders of the republics can draw from the experiences of others as they search for answers.

4. Balancing the Devolution and Evolution of Sovereignty

As Secretary Baker pointed out in a speech in Berlin this June, one of the most striking phenomena across all of Europe today is the combined and simultaneous devolution and evolution of the nation-state. While the nation-state remains by far the most significant political unit, its political role is being increasingly supplemented by both supranational and subnational units.

In Western Europe, an intense and comprehensive voluntary evolution of governing authority above the national level has been accompanied by the devolution of power to state and local governments, to regions that sometimes cross national borders, and to the private sector. In Central and Eastern Europe, and now clearly in the Soviet Union as well, devolution is certainly the more prominent phenomenon. The collapse of Communism has freed ethnicity to re-emerge as a powerful political force, threatening to erect new divisions between countries and, even more acutely, within multinational states.

Evolution and devolution need not be alternatives, but instead can be complementary, and indeed interdependent developments. The foundation must be democracy and grassroots involvement in political processes. The challenge for democracy is to encompass, to represent, but also to transcend, ethnic ties on the basis of common values.

The United States balances democracy and diversity through federalism. The architects of a united Europe have adopted the principal of "subsidiarity"—the devolution of responsibility to the lowest level of government capable of performing it effectively. By the same token, it makes sense for the various parts of the Soviet Union to consider balancing devolution of authority with the voluntary common delegation of powers for basic matters such as defense, trade, monetary systems, and the protection of basic human rights—particularly equal treatment of minorities. Given the strength of the drive for independence, it may take time before the citizens of the republics are willing to consider such combinations—but the need will not go away.

In 1945, much of Western Europe was broken, hungry, and hostile. But the integration of Western Europe within the EC and NATO has virtually transcended all the old territorial disputes, irredentist claims, and ethnic grievances among and within their member states. Euro-Atlantic integration has made it literally inconceivable that localized disputes could become a source for serious conflict among these states. The incentives for cooperation within these multi- and supranational frameworks are overwhelmingly high compared to with the remaining areas of discord.

Eventually, similar structures will have to develop to shape interdependence with and among the lands of Central and Eastern Europe and the Soviet Union if they are to ever share in comparable levels of peace and prosperity. The processes of evolution and devolution need to be kept in constructive equilibrium. Only by achieving balanced progress in both directions can the individual be assured a voice in a democratic and interdependent world.

5. In Sum

In sum, although power has now shifted to the republics, the crisis of political legitimacy remains acute. The fragmentation of authority could continue—down to still smaller units—if the new leaders fail to establish legitimacy through democracy with respect for minority rights. A preoccupation with republican independence is yesterday's battle, a conflict waged and won against totalitarian central authority. Decentralized power in the republics will not necessarily overcome ethnic strife or economic autarky. At this point in time, an ongoing reform effort needs to turn to these new challenges. We need only look as far as Yugoslavia to see the costs of devolution that slides into disintegration.

AN OPPORTUNITY FOR DEMOCRACY

In the immediate aftermath of the coup, Aleksandr Yakovlev told us that he and his fellow democrats owed a great debt of thanks to a coup plotters. Those eight men, he explained, had opened the way for the democrats to propel reform five or ten years ahead. Old apparatchiks could be moved to the side. The confrontation had produced a real revolution in the minds of the people. Power was now with the democrats. But Yakovlev still asked, "Can we cope?"

There is now a great opportunity to launch true, far-reaching reforms in the Soviet Union and its republics. Conditions at home remain extraordinarily difficult. The old command economy has broken down, but no market system exists to succeed it. The traditional system of authority has collapsed, but the forces of the new, rough-edged pluralism have yet to work out cooperative arrangements so that they can design and implement a program.

The democrats recognize that they must build a stronger base of support. One reform leader told us that during the coup the democrats drew vital support from the "oppositionists". These people are not necessarily the same as democrats. They have rejected the old Communist ways, but as of yet they do not have a deep commitment to any successor system.

Shevardnadze, Yakovlev, Popov, Sobchak, Stankevich and others launched in July 1991 a new Movement for Democratic Reform. At present, it is an umbrella organization that draws from the various fledgling democratic parties that had already been forming, as well as from new participants. They are working to avoid the traditional Russian re-

form problem of failing to link the intelligentsia with other groups. Interestingly, Shervardnadze told us that two core groups of support were young people and some leaders in the defense industrial sector. The latter—intelligent, technologically sophisticated leaders—recognize that the old system does not work, and they believe there is an opportunity to put their skills to use in a market economy.

The greatest danger the reformers now face is the discrediting of democracy. The average man or woman on the street seems sullen, tired of talk. The new parliaments, like the old Dumas of 1905-17, seem to offer high drama, but no change for the better. One person summarized the situation with an anecdote: The first person who puts vodka on the shelves, she said, will carry the day. Presidents Gorbachev and Yeltsin, who seem to be working in concert, both told us: We need to help people.

Gorbachev also told us that the coup removed the head of the serpent, but a large body of traditionalists remains. He pointed to two significant risks. First, indifference and apathy would weigh down efforts to stimulate a new political and economic system. Alternatively, frustrations might build into an acute response, a demand for action, any action.

Authoritarian strains run deep in Russian and Soviet society. At some point, desperate people may turn back to the autocrat who claims a firm hand is needed to pull people back up. Yet the coup demonstrated that an organized resistance, assembled around newly elected leaders, could defeat authoritarians. Moreover, important groups—including the Army and parts of the KGB—would not intervene against the democrats. Frankly, the big unknown variable is the legendary ability of the Russian people to endure.

A visitor to Moscow or St. Petersburg knows that winter is coming. Perhaps because winter has played such a major role in Russian history, defeating invaders and leaders alike, the encroaching winter appears to be taking on a symbolic feature of challenge. While the task ahead for the democrats will of course extend much beyond the next six months, the new democratic mayors of Moscow and St. Petersburg are mobilizing to meet the needs of their publics over this period.

For Mayor Sobchak of St. Petersburg and other new, dynamic leaders, these preparations are part of a large strategy: They understand people need confidence in the future; they need hope; they need some examples of success. Sobchak also recognizes that the spirit of the people needs to be invigorated by their own sense of what they can accomplish, not by what others can give to them.

These are proud people. They want their accomplishments and potential—which are great—to be recognized. They want our support and cooperation. But they prefer investments or loans to handouts. Perhaps the most encouraging sign is that the type of leaders who will need to step forward if Russia and the other republics are going to be successful—people like Sobchak and Nazarbayev of Kazakhstan—recognizes the great opportunities to be seized and the dangers to be avoided ultimately depend on tapping the creativity and energy of the people they represent.

A POLICY OF ACTIVE U.S. ENGAGEMENT WITH THE SOVIET UNION AND THE REPUBLICS

Throughout four decades of Cold War, America's relations with the Soviet Union

were the primary preoccupation of our foreign policy. Although the old Communist regime is now gone, it would be a tremendous mistake to disengage just as the Soviet Union and its republics are moving into a critical stage of transition. The United States continues to have strong national interests in the course of events in that country. U.S. policy towards the Soviet Union and the republics must continue to adapt to meet changes and changing circumstances.

One strong national interest draws from a strain of our foreign policy that dates back to our earliest days as a nation. The United States has always viewed itself as a practical experiment in liberty and democracy. And we have welcomed, encouraged and, when possible, even protected those who aspire to these same values. This is the important element of idealism in American foreign policy. Today's events in the Soviet Union and its republics offer one of our greatest historical opportunities to promote those values, and through doing so, to foster a democratic partner that can help us address other challenges around the world.

But America's statercraft has also sought to blend realism with this idealism. In this situation, our realistic national self-interests also dictate serious engagement. There is the potential for a democratic and market-oriented Soviet Union to contribute to global peace, stability, and prosperity.

But even if this potential fails to be fulfilled, we have an interest in precluding a return to an authoritarian state or states that may threaten neighbors. Within the past two centuries, the armies of Russia and the Soviet Union have marched from the shores of the Pacific to Paris and Berlin. Today, the borders of the Soviet Union mark an arc of other lands in transition: from the aspiring democracies of Central and Eastern Europe, through the Islamic lands of the Mideast, on to South Asian countries struggling with their own religious and national conflicts, and extending to the Communists of Eastern and Northern Asia who are trying to bolster bankrupt regimes. A large share of the world's nuclear weapons remains in the Soviet Union. Various republics have great factories for producing advanced conventional weapons, and some may be already looking for new markets in the world's troublespots. Upheaval in the heart of Eurasia could threaten the very countries that are our primary allies and economic partners.

In sum, because of both our ideals and our self-interest, our foreign policy must continue to direct considerable energy and creativity to the Soviet Union and its republics.

Let me briefly highlight our thinking on three topics: (1) political evolution; (2) economic reform; and (3) foreign and security policy.

1. Political Evolution

Our policy towards the political evolution of the Soviet Union needs to respect the fluidity of the situation. And we must acknowledge the limits of any outsider's ability to affect the future course of events.

This is a key point: The fundamental need to establish political legitimacy can only be accomplished by the people of the Soviet Union and its republics. It's up to them to determine the outcome, not us.

But we are not disinterested bystanders. Many Soviet reformers, people of great reputation at home and abroad, have told us that the opinions of the Western democracies, and in particular the United States, are important. And although it is not our place to delineate the final outcome of the new political arrangements, we can speak to

the process by which the decisions are reached.

Therefore, we have informed the leaders of the Soviet Union and its republics that our policies towards them will be guided by five principles set out by Secretary Baker on September 4:

First, they should determine the future of the country peacefully, consistent with democratic values and practices, and the principles of the Helsinki Final Act.

Second, we urge respect for existing borders, internal and external; any change of borders should only occur by peaceful and consensual means, consistent with CSCE principles.

Third, all levels of government should be based on democracy and the rule of law, especially through elections.

Fourth, all parties should safeguard human rights, based on full respect for the individual and including equal treatment of minorities.

Fifth, we urge respect for international law and existing international obligations.

These principles are of course not only applicable to the Soviet Union. They are drawn from the core principles of CSCE, the Helsinki Process, including the Charter of Paris. They have been adopted by 38 countries reaching from North America throughout Europe.

These principles are not mere guidelines. They are also standards of accountability. Those Soviet leaders and peoples who adhere to these principles should know they are building the only sure basis for our support and assistance.

That's the message Secretary Baker conveyed to all Soviet and republic leaders when he went to the Soviet Union last month. That's a message we've asked our allies to reinforce. And that's a message we ask the Congress to support, too.

I would also draw special attention to the fact that human rights remains at the heart of our policy toward the USSR and the republics. It is as important now as ever before, as the republics gain authority over such issues as emigration and other fundamental human liberties. Some of the republics are potential abusers of human rights. So we're making very clear to all of them that human rights, including equal rights for minorities, must be respected and that their behavior in this regard will be a major factor in determining our engagement with them.

As I pointed out in February, we also need to try to manage uncertainty by multiplying our points of access within a society that is transforming itself. We have been working for some time to expand our contacts with republic and local leaders. This has included a program of "circuit riders" regular visits by U.S. Embassy officials to republics where they can develop special ties. These contacts need to be strengthened further through opening new American consulates or "small posts" in various republics. We have sought ways to support democrats, free trade unions, the development of a free media, and market reformers. We have recently proposed Peace Corps programs.

We also believe that it's time for the Soviet Union and the U.S. to terminate the impediments to human contacts that are among the pernicious legacies of the Cold War. We urge Soviet agreement to our "Open Lands" proposal that would open all closed areas in both countries to travel by each other's citizens. We are also eager to work to lift onerous travel controls, visa restrictions, and other barriers to regular contacts between our citizens.

Our efforts are designed to expand our contacts with the full range of important groups in the newly pluralistic Soviet Union. Indeed, the need may be greatest with "swing groups", such as the Soviet military and the defense industrial complex. These remain powerful institutions or groups, and they reflect the anxiety that troubles much of the society. No Soviet leader will be able to ignore the military's concern about housing and jobs for the troops withdrawn from Central and Eastern Europe and the Baltics. No economic reform program will be politically successful if it does not address the fears of the skilled and influential workers in the defense industrial sector.

2. Economic Reforms

Market economic reforms also must catch up with the new political freedom.

The most obvious need is to offer humanitarian support to ensure that basic needs are met during the winter. We have already sent two high-level missions to evaluate needs and distribute problems throughout the Soviet Union. This week Secretary Madigan is leading another team, including a number of private business executives. Since a significant dimension of the food problem is the failure to acquire, transport, store, and distribute foodstuffs effectively, an important part of USDA's work is to identify ways to help the Soviets and the republics introduce markets, thus fully utilizing what they produce. We are also sharing our assessments with the other G-7 countries, and our experts will meet within about a week to strengthen our cooperation.

In the meantime, we have decided to accelerate the availability of the \$1.5 billion of CCC credit guarantees that the President announced this June, and increased the coverage, so the Soviets can secure credit to buy large quantities of American grain and other basic foodstuffs. (This \$1.5 billion is in addition to \$1 billion of CCC credit guarantees we provided in December 1990.) And we are examining other possibilities to meet emergency food needs.

Since early this year, we have worked with Project Hope to deliver urgently needed medical supplies directly to target locations. A number of U.S. pharmaceutical firms have made generous in-kind donations to this effort. So far, we have sent shipments to the Ukraine, the Aral Sea region of Kazakhstan and Uzbekistan, and Moscow, and we have others planned for the Urals industrial region and elsewhere. AID is working with Project Hope to extend and expand this program.

The second element of our economic effort is to work with the Soviet Union and its republics to develop expeditiously a serious and comprehensive market economic reform plan. The new Special Association with the IMF and World Bank, first proposed by President Bush last December, enables the reformers to start working right away with Western experts to develop a reform program that meets the standards of the international economic community. It is very important that the reforms meet these standards—not because Western governments want to establish hurdles, but because these reforms are the key to tapping the Soviet Union's own considerable resources and talents. Private capital will only invest where businesses determine the mix of return and risk to be worthwhile. The critical fact is that given the size of the Soviet economy, even large infusions of funds from Western governments would be insufficient to make a difference on the fundamental question of economic growth. We don't do the new re-

form leaders any favor by obscuring the fact that only private capital flows will enable them to create growth and jobs.

Most economists could probably agree on the components of a suitable market economic reform plan for the Soviet Union. That's not the problem. The plan will need to include the clear establishment of property and contract rights, privatization, competition among producers, macroeconomic stabilization, price decontrol, and some narrowly delineated system to ensure that the general public receives necessities in the aftermath of price decontrol and before producers respond to price signals by increasing supplies. The difficult task is the sequencing of these actions.

There is no doubt that the implementation of such a plan would be difficult. But as we have told the Soviets for years now, the situation will not get better while they wait. Indeed, I believe it is imperative to act promptly so as to draw upon public support in the aftermath of the coup. I believe leading reform economists, such as Grigory Yavlinskiy, share this perspective. But they are struggling at present to secure a new economic treaty among republics that might enable them to have the authority to implement such a plan.

The third component of our economic engagement is an enhanced program of technical cooperation. We began this effort in the autumn of 1989; now we need to expand it. As you are aware, the Administration is seeking authorization from Congress to spend a limited sum of foreign assistance monies for technical assistance to the Soviet Union and the republics.

Our political assistance will concentrate on helping to build democratic institutions.

Our present economic priorities are: Improvements in the food distribution system, so the Soviets can use their own resources to help meet basic needs.

Promotion of private investment in the energy sector, which could help the Soviets and the republics increase their hard currency earnings in the medium term.

Support for defense conversion, which, while extraordinarily difficult, is obviously highly significant politically and economically.

Finally, we need to expand our efforts to train people in the basics of business and to improve the understanding of how a market economy works.

President Bush sought to lend high visibility to the priority of helping to build a private sector by hosting a large breakfast for business entrepreneurs when he visited Moscow. The Commerce Department has begun an internship program with American businesses, which we would like to expand. The Peace Corps has proven helpful in Central and Eastern Europe at a low cost, and we are examining whether we might draw on its skills in this area in the Soviet Union. In addition, as Secretary Brady has suggested, we are working on ways to draw on the capabilities of our private sector, including through groups like the Citizen Democracy Corps.

We hope the Congress will be able to support our efforts by authorizing expenditures for enhanced technical assistance to help build democracy and a market economy, by repealing the Stevenson and Byrd limitations on our credit programs, and by ratifying the Trade Agreement.

3. Foreign and Security Policy

Our third area of engagement is through our foreign policy agenda. We are pleased with the accomplishments in this realm to

date, but we have much more to do. Our strategy since 1989 has been to explore and develop possible "points of mutual advantage" for both the United States and the Soviet Union. We probed the "new thinking" in Soviet foreign policy, seeking to shape and, where possible, to alter Soviet policy calculations so that they might face up to the contradictions between the new thinking and old habits. This strategy required us to broaden and deepen our agenda with the Soviets.

Our first objective was to work with the Soviets to overcome the division of Europe, the original cause of the Cold War. Our cooperative approach avoided singularizing or isolating any party that respected moves towards freedom. The Iron Curtain was scrapped, and we achieved German unification peacefully and democratically. The Baltics have been freed. Although many Soviet troops still need to return home from Germany, Poland, the Baltics and Cuba, we are close to achieving some of the key goals of the U.S. foreign policy for over 45 years.

Second, we stressed our common interest in resolving regional conflicts peacefully, often seeking to rely on elections as a means of establishing legitimacy and the local popular will. To create an appropriate context for elections, we sought to use our respective influence to persuade conflicting parties that the use of arms would not produce an enduring solution. This has been the approximate formula for our cooperative efforts in Nicaragua, El Salvador, Cambodia, Angola, and Afghanistan. The experience provided the basis for the immediate, joint U.S.-Soviet denunciation of Iraq's attack on Kuwait, which in turn provided the basis for unprecedented UN and multinational action.

Since the failed August coup, the pathways of cooperation that we established have multiplied. We have agreed with the Soviets to cut off all arms to the antagonists in Afghanistan by the end of the year. The Soviet Union has agreed to withdraw its troops from Cuba and put its economic relationship with Cuba on a commercial basis. We hope the increasing isolation of Castro will eventually persuade him that the people of Cuba can only prosper if they are given the freedom that more and more people around the world now enjoy. There also now is a chance that the rebels in El Salvador recognize there is no future in killing, and that both sides of that deeply wounded society have decided to try to leave hatred behind for peaceful reconciliation. There may be possibilities for returning the Northern Territories to Japan, ending one of the last territorial disputes of World War II. Finally, we are working with the Soviets to launch a Mideast peace conference.

Third, over the past two years, we have deepened and expanded the arms control agenda. This led to landmark agreements on conventional forces, strategic arms, and chemical weapons destruction. We still must focus on the ratification and complete implementation of such agreements.

But now we can also move to a different threshold of accomplishment. President Bush pointed the way to a whole new attitude toward nuclear weapons, stability, and security in his Friday address.

Indeed, inherent in the President's message was an important theme: The dangers that we, and the Soviets, will face in the future are more likely to come from rogue third parties than from one another. So it makes sense that our arms control thinking shift increasingly to the risks of proliferation and regional conflicts.

Our fourth objective was to launch joint efforts to solve translational problems of common interest, such as narcotics, terrorism, and the environment. Now this work must increasingly involve republic leadership.

In sum, our foreign policy agenda remains rich in potential. As we sweep away the items on the old agenda, it is our intention to move a new agenda, one where we hope the changing Soviet Union can act increasingly as a partner in addressing future problems.

DEFINING POLICY SUCCESS

I would like to conclude by raising a point that might seem somewhat unusual, but which I believe is important as the United States considers its future relations with the Soviet Union and the republics. We are likely to be working through a transitional period for what could be a considerable period of time. So we need to reflect carefully on what we would consider to be the results of a successful policy.

I suspect we would generally share a sense of the objectives on the foreign policy agenda I outlined. But what constitutes success in the other dimensions of our policy—especially those related to political evolution and economic reform?

Frankly, we should not be surprised if the Soviet Union and its republics are not able to completely transform themselves into a stable, prosperous democracy or democracies on the Western European model within the next few years.

Nevertheless, there are numerous results short of that goal that might be possible. These intermediate results could prove beneficial to the United States and the world at large. And they could be steps on a pathway to a tremendous achievement.

I suggest that we direct our efforts at maintaining the conditions in which democratic and market economic reformers can continue to strive to bring the Soviet Union within the larger Euro-Atlantic community. We should expect that there will be setbacks. We should expect that some republics will go through periods of struggle, violence, factionalism, and even a return to the old tools of repression. But these twists and turns should not dissuade us from continuing to encourage and support those who continue the effort to embrace the five political principles I outlined above.

For 45 years, other Americans held fast so that freedom and liberty could finally light the lives of hundreds of millions of people frozen in a backward and frightening age. These people will need the leadership, spirit, and example that only America can supply. And subsequent generations of Americans will be better off for our continued effort.

DEATH, DYING, AND HEALING IN TENNESSEE

HON. JOHN J. DUNCAN, JR.

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. DUNCAN. Mr. Speaker, I would like to express my sincere appreciation to Sharon Racsko, the daughter of Clemma Link, who passed away on July 31, 1991.

Mrs. Racsko has written a wonderful tribute to her mother which highlights the true values to her mother and the closeness shared by its residents.

Mrs. Link passed away after a 5-year battle with cancer. Her strength and that of her fam-

ily was maintained by their faith, friends, and community.

I salute Mrs. Link, her family, and Vonore for reminding us never to take for granted God, family, and community.

DEATH, DYING, AND HEALING IN TENNESSEE

The Navy seemed like such a great place to bury my Tennessee accent. Not only was my accent a sure give away, but my naivete screamed to strangers that yes, I was just a country girl. I wanted the death of my past and I honestly believed leaving Tennessee would make it happen.

It was the stereotype of being an uneducated, hillbilly that I wanted to see die. I wanted the chance to free myself, to prove that being from a small town in Tennessee didn't have to be a life-long handicap. Well, in time, the Navy did help me lose my accent. Living in Florida, Mississippi, Texas, California, and South Korea did re-educate me on what the "real world" was all about. And yes, getting my college degree and entering graduate school did prove I wasn't really a hillbilly. Surely everyone knows hillbillies don't go to college. Or do they?

I knew one who did . . . my mother. She was the oldest of seven children and the daughter of a well-known back-woods preacher from Vonore, Tennessee (Rev. James Patton). But she, too, wanted to shed her southern accent, and escape the innocence of her rural upbringing. She, too, wanted more education than a one-room school house had to offer. What did she learn in the "real world" that I had not? It wasn't until her death this past July 31st, 1991 that I found out. It wasn't until her five year battle of terminal cancer brought me to her bedside that I took the time to see what joy being from a small town in Tennessee could bring.

How can this be? I'm not sure how the transformation that honest-to-goodness Christianity can bring, but for me it happened not in a loud way, not in a self-seeking way, but in a calm, peaceful, and humble way. It came in a covered dish, in a small african violet, in a painted basket, in a handmade walking stick, in a discreet get-well card with church donations, in phone calls, in a gospel tape, in visits, in the get-well cards from Bible-school children, in a bushel of peaches, in a handmade birdhouse. It came through cards, through nurses, through prayers, through the condolence letters of state officials, and it came through the family . . . the family of God.

While my mother is gone, the lesson her death has taught me is so great and poignant that even sharing it with those who made it happen cannot attest to the impact it has made in my life. Yes, quietly dying in a small obscure town in Tennessee, surrounded by friends, family, and true Christians yields a far greater reward than the death of a hillbilly stereotype. For losing one's accent, obtaining a formal education, and living all over the world, cannot compare to the quiet understanding that I finally found as I held my dying mother's hand. It was all too clear then that dying in Tennessee means grief is shared, and that healing will come.

I think my mother planned, and knew in her heart, that her return to Tennessee last year would be the last great gift she could give us. For surely she knew we would be in the loving care of those "hillbillies" who know God. And she was right. Mommy was much wiser than I ever knew. . . . I wish I could tell her now.

TENNESSEE HEALING

(By Sharon R. Link Racsko, September 14, 1991)

Looking into the weathered faces,
Shaking the calloused, and trembling
hands,
I took a moment to reflect on, the
Genuine concern of each child, woman and
man.

It was then that wisdom came closer ...

As it whispered its lesson to me.
No matter how far you travel
Your true home is in Tennessee.

While shocked at this vivid revelation,
I pondered on it for a while.

Yes, I thought it's here ...
That Christianity is still in style.

From that moment on my grief
Suddenly, felt lighter I thought,
And forward I took my first step
In the Healing that Tennessee had brought.

PATRIARCH DIMITRIOS I

HON. EDWARD F. FEIGHAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. FEIGHAN. Mr. Speaker, it is with a profound sense of loss that the world mourns the passing of Patriarch Dimitrios I, the ecumenical patriarch of the 250 million-member Eastern Orthodox Church, including the Greek Orthodox Archdiocese of North and South America. I know many Members of Congress will recall the historic U.S. visit of the Patriarch just last year and the enormous outpouring of support that we saw from the Orthodox community in this country.

Patriarch Dimitrios devoted his tenure to the pursuit of world peace and to dialog among all Christian denominations and other religious traditions. In 1987, he paid a 5-day visit to the Vatican where he met with Pope John Paul II. The two spiritual leaders issued an historic declaration committing their respective churches to a continuing dialog that would ultimately lead to full communion between the Orthodox and Catholic churches. This was a great step toward healing the millennium old rift between Eastern and Western Christianity.

His mission was an inspiration to people of all faiths everywhere. The Patriarch reminded us that what we hold in common is more important than what divides us.

The Patriarch's passing last week comes at a time when the Eastern Orthodox Church is, at last, emerging from under the thumb of Communist control throughout Eastern Europe. As the consolidation of democratic rule takes hold throughout the region, the Eastern Orthodox Church will undoubtedly play a pivotal role in shaping the domestic and international face of the new world order.

As the leaders of the Eastern Orthodox Church gather to mourn their beloved Dimitrios and to select a new patriarch, I ask my colleagues to join me in expressing our deepest condolences on the loss of this distinguished religious leader and man of peace.

EXTENSIONS OF REMARKS

TRIBUTE TO THE FRANKENMUTH OKTOBERFEST

HON. BOB TRAXLER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. TRAXLER. Mr. Speaker, I rise to inform my colleagues of the second annual Frankenmuth Oktoberfest during October 11-13 in Frankenmuth, MI which is located in my district. These fine people hold this celebration in honor of the reunification of East and West Germany. I commend the wonderful citizens of Frankenmuth who have for the past 146 years continued to appreciate and nurture their German heritage.

The community of Frankenmuth was founded by immigrants from the Franken area of Germany in 1845. Today, the heritage of the Frankenmuth community is maintained through language instruction in our schools, through promotion of Bavarian-style architecture in our buildings, through cultural exchanges sponsored by the city's sister city committee, and through activities and events.

Let me tell you about the fineness of Michigan's "Little Bavaria", Frankenmuth. It is a town of 4,408 residents, and it attracts 3 million tourists every year, making it the No. 1 visitor attraction in Michigan. The draw is the Bavarian architecture, the Bavarian Inn and Zehnder's Restaurants, the Frankenmuth Brewery, and Bronner's year-round Christmas Wonderland.

The Oktoberfest celebration will include German music and food. A special treat during Oktoberfest is a personal appearance by "De Jodeler Franzl". Franzl is from Zillertal and will be appearing in Frankenmuth during his North American musical tour. I invite my colleagues to come to Frankenmuth, MI to participate in the Oktoberfest activities. I salute my Michigan neighbors of Frankenmuth for their pride and loyalty to their German heritage.

HORACE F. "BUDDY" BROWN
CELEBRATES HIS 80TH BIRTHDAY

HON. JACK FIELDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. FIELDS. Mr. Speaker, I want to take a moment to bring to the attention of my colleagues, news of a very festive event that will take place this Saturday in Baden, MD.

In Baden, Saturday, friends and family of Horace F. "Buddy" Brown, Sr. will gather to wish him well and help him celebrate his 80th birthday.

Mr. Brown was born in Reading, PA, on October 12, 1911, the son of Albert and Elsie Brown. In his middle teen years, Mr. Brown's family moved to Atlantic City, NJ. When he reached adulthood Mr. Brown moved to Washington, DC, where he worked as a florist near the Shoreham Hotel. During his career as a florist, Mr. Brown enjoyed serving the needs of many of Washington's citizens and visitors.

One of Mr. Brown's regular customers to whom he regularly supplied flowers during the

1930's, was a well-known woman who visited his shop each Saturday to purchase 50 cents of flowers. It seems that the woman's hair salon was also located near the Shoreham Hotel, and she found it convenient to purchase her flowers at Mr. Brown's shop. Her name was Eleanor Roosevelt, and as the wife of President Franklin Roosevelt, she served then as the Nation's first lady.

Another customer made an indelible impression on Mr. Brown—as she would have, no doubt, on anyone here in this Chamber. It seems that on one particular evening, a woman and two companions breezed into his shop to purchase a corsage they had inexplicably forgotten to purchase earlier. After they had selected an appropriate corsage the woman asked Mr. Brown if he would be so kind as to pin the corsage to her dress. And, shaking slightly with understandable nervousness, Mr. Brown carefully and expertly affixed the corsage before the great movie star, Jean Harlow, and her companions departed his shop.

Despite having met Eleanor Roosevelt and Jean Harlow, another woman captured Mr. Brown's heart. In the summer of 1937, Mr. Brown met one of his neighbors Miss Mildred Cheek, who had recently moved to Washington from Durham, NC. Mr. Brown and Miss Cheek had rented rooms in adjoining boarding houses and met during their normal comings and goings. They enjoyed one another's company, and were married on October 29, 1937. Later this month, Mr. and Mrs. Brown will celebrate their 54th wedding anniversary.

In 1939, Mr. Brown began working for Lansburg's department store, eventually rising to the position of stock manager for the store's warehouse. He retired in 1974, after 35 years of employment.

For the last 21 years, Mr. and Mrs. Brown have resided in Brandywine, MD. Their three children—Frank Brown of Greensboro, NC; Vicki Peckham of Washington, DC; and Robin Bridges of Forestville, MD—will join them this weekend in Maryland to help Mr. Brown observe and celebrate his 80th birthday.

Mr. Speaker, I know that you join with me in wishing this wonderful man a happy 80th birthday, and wishing him and his lovely wife many more years of good health and happiness together. Their love and devotion to one another inspires all who know them, including their three children, their five grandchildren, and their one great-grandchild.

Happy birthday, Mr. Brown.

THE MOUNT SINAI—I.J. SELIKOFF
OCCUPATIONAL HEALTH CLINICAL
CENTER: GRAND OPENING
OF A NEW WESTCHESTER INSTITUTE

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mrs. LOWEY of New York. Mr. Speaker, I rise today with pleasure to announce that Westchester County is gaining an important and much-needed new health facility. The Mount Sinai—I.J. Selikoff Occupational Health

Clinical Center is opening a Lower Hudson Valley division at the Phelps Memorial Hospital in North Tarrytown. It is a welcome and important addition to the services that are offered in our region.

The center is part of a statewide network of occupational health clinics funded by New York State. As a member of the Education and Labor Committee here in the House, I have been a strong proponent of workplace safety and of providing adequate health care to American workers. I am proud that my State has taken the lead in this area, and that Westchester will now benefit from this first-rate new occupational health clinic.

I have also been a fervent supporter of partnerships between the private and public sectors and between labor and management. In this area, as well, I can point to the Mount Sinai-Selikoff Center as an example of just such a cooperative program. The center's advisory board consists of people from many walks of life—labor representatives, employers, health professionals, academicians, and public health officials. They work closely with a variety of public and private institutions to ensure that our local workforce will be provided with the kind of quality occupational health care that it deserves.

I salute the board members and all who are associated with this fine center for bringing this excellent program to Westchester.

WELL DONE, A. ROY KIRKLEY, SR.

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. PAYNE of New Jersey. Mr. Speaker, I would like to bring to the attention of my colleagues the outstanding career of A. Roy Kirkley, Sr. Professor Kirkley recently joined the ranks of the retired.

Roy Kirkley was born in 1929 in Vauxhall, New Jersey. In 1947 he was employed by Congoleum Nairn, where he became involved in the labor movement. He was elected shop steward and negotiating committee member. In 1963 Roy was appointed business agent, organizer, and education and political representative of the Amalgamated Clothing Workers of America Philadelphia Joint Board. He represented the 5,000-member local 170.

In 1970 Roy's love and knowledge of the labor movement took him to the classroom. He was appointed associate extension specialist/professor and coordinator of labor programs for Rutgers Labor Education Center. On July 1, 1972, Roy was promoted to full professor, with tenure, at Rutgers, the State university of New Jersey. He retired from that position on September 1, 1991. He has the distinction of having been the only African-American tenured full professor in the labor studies field in the United States.

Roy is a very active member of the A. Philip Randolph Institute. In 1971 he was appointed to the national board. He has used that opportunity to organize and service affiliate groups in 130 cities and 32 States. In his own home State, he is State coordinator of the New Jersey State A. Philip Randolph Institute. Be-

tween 1979 and 1980 Professor Kirkley took a sabbatical and researched the needs of African-American workers in the trade union movement. This work resulted in the A. Philip Randolph Education Fund Intern Program.

Mr. Speaker, I know my colleagues would like to join me as I extend my congratulations on an outstanding career, and my best wishes for a happy retirement to Prof. A. Roy Kirkley, Sr., and his family.

THE CSCE MOSCOW MEETING ON THE HUMAN DIMENSION

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. HOYER. Mr. Speaker, last Friday, October 4, the 38 participating States of the Conference on Security and Cooperation in Europe concluded the Moscow Meeting on the Human Dimension. This month-long meeting, the third and final in the human dimension series, was a milestone in the Helsinki process. Its location was especially symbolic, illustrating not only how far we have come in bridging the gap between East and West, but also how far we have to go in eliminating human rights abuses within the CSCE. And in the wake of a failed coup, in a city where barricades still line the streets and shrines to the fallen still dot the sidewalks, the CSCE's role in safeguarding democracy, human rights, and the rule of law, seemed more urgent than ever.

As chairman of the Commission on Security and Cooperation in Europe, I, along with Co-chairman DENNIS DECONCINI, led a congressional delegation to Moscow for the opening of the meeting. We were there to welcome the newly independent Baltic States, Estonia, Latvia, and Lithuania, to their rightful places at the CSCE table. Members of the Commission staff stayed on for the entire meeting, serving as part of the U.S. delegation under the able leadership of Ambassador Max Kampelman.

The selection of Ambassador Kampelman as head of the U.S. delegation showed the very high priority the United States places on the CSCE process. Ambassador Kampelman's long connection with the CSCE, and his many important contributions to its success, are well known to all of us on the Commission, and especially to those who have had the honor to work with him. He is a skilled negotiator, an accomplished diplomat, and a good friend. I commend him for his leadership in Moscow.

The final document adopted in Moscow deepens and supplements CSCE commitments in the Copenhagen and Geneva Documents, as well as the Charter of Paris for a New Europe. It categorically and irrevocably declares that CSCE human dimension commitments are matters of direct and legitimate concern to all participating States, and not solely the internal affair of the State concerned. This puts to rest, once and for all, the argument that criticism of a State's human rights performance constitutes interference in internal affairs. And by doing so, the Moscow Document opens the door to more effective review of implementation and pursuit of our common goals.

Two years ago, in Vienna, the CSCE created a procedure allowing for a rigorous and virtually continuous review of human rights issues. This procedure, known as the human dimension mechanism, provided for instances of nonimplementation of CSCE commitments to be raised by any participating State at any time, and committed each government to respond when questions concerning its implementation record were raised.

The cornerstone of the Moscow Document is the significant expansion of this mechanism. The newly enhanced mechanism introduces the idea of the CSCE playing a mediating or advisory role in helping a participating State to resolve disputes or deal with potential problems before they reach the point of serious confrontation. Any participating State may, on a voluntary basis, invite a panel—drawn from a CSCE roster—of experienced, skilled people to enter its territory in order to encourage a mediation or good offices process directly with the concerned parties.

But if these voluntary measures are not taken, or prove inconclusive, the expanded mechanism also provides for an additional, more intrusive step: A mandatory fact-finding function. Adding the mandatory element is significant for two reasons: It should act as an incentive for a State to request assistance voluntarily, which is the preferred outcome, and it will provide the CSCE with a tool for addressing an issue of concern to the CSCE community, even when the State involved is unwilling.

In addition to the expanded mechanism, the Moscow Document contains advances over previous CSCE commitments in several important areas. It strengthens commitments to the rule of law, focusing on such issues as the independence of the judiciary; the importance of open and accountable legislative processes and review of administrative regulations and decisions; the need for civilian control of military and paramilitary forces, internal security and intelligence services, and the police; and safeguarding the independent media, including first-time recognition within the CSCE that independent media are essential to free and open societies and accountable systems of government.

The document also contains commitments in other areas of the human dimension, including freedom of movement, respect for the rights of migrant workers, nondiscriminatory treatment of women, and a detailed elaboration of provisions on nongovernmental organizations. I am especially pleased to note that the participating States agreed in Moscow to ensure protection of the human rights of persons with disabilities, and to take steps to ensure the equal opportunity of such persons to participate fully in the life of their society. This commitment is an important step toward achieving equality for persons with disabilities throughout the CSCE community whose rights have been too long ignored.

The United States delegation delivered a number of strong statements at the conference, on issues such as free and fair elections, the critical situation in Yugoslavia, the deteriorating human rights situation in Georgia, the rise of intolerance in a number of CSCE countries, and continued barriers to freedom of movement.

With regard to that last point, however, I would like to express my profound disappointment that the Soviet Union did not, as we had hoped and urged, resolve the outstanding refusenik cases by the close of the Moscow meeting. By missing this opportunity, the Soviet Union squandered a valuable chance to demonstrate concretely its commitment to actualize the human dimension of the CSCE.

With that serious qualification, Mr. Speaker, I think, overall, that we can be pleased with what was achieved in Moscow. The Moscow Document holds reinforced and renewed commitments to implement all CSCE provisions, and recognizes that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for a lasting order of peace, security, justice, and cooperation in Europe.

Our task, now, is to press all participating States to make these commitments a reality. The new mechanism is only as strong as the political will of the States to employ it. The new provisions are only as bold as the will of the States to enforce them. And the serious challenges confronting Europe will only be dissolved by a CSCE ready to act on them.

As we look to the fourth followup meeting of the CSCE, to be held in Helsinki next spring, we must be prepared to respond to a changing Europe with flexibility, determination, and speed. We need to develop a framework for considering new participation in the CSCE; Armenia and Georgia have already made their requests. We need to address the question of self-determination—an increasingly relevant and potentially explosive concern. We need to broaden CSCE's environmental component, for the transboundary nature of pollution requires concerted multilateral efforts. We need to consider ways to improve the openness of CSCE meetings and procedures, and to more fully involve the nongovernmental community, whose work is so critical to our own. And we need to continue our serious review of implementation, in spite and because of the tremendous progress of the CSCE community has made toward full realization of the Helsinki principles. Only with ceaseless resolve and conviction can we render the Helsinki process worthy of those whose rights it strives to protect.

HONORING THELMA MONTGOMERY,
PRINCIPAL OF SANTE FE HIGH
SCHOOL

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. TORRES. Mr. Speaker, I rise today to recognize a special individual, Ms. Thelma Montgomery, principal of Santa Fe High School in Sante Fe Springs, CA. Ms. Montgomery is retiring from public education after 23 years of service to our youth and will be honored at a special celebration on Sunday, October 20, 1991.

Ms. Montgomery received her bachelor of arts and masters degrees in English from California State University, Fullerton. She later

received a second masters degree in secondary education from Whittier College and also completed pre-doctorate work at the University of Southern California.

Ms. Montgomery has dedicated her career to the field of education. She served for 10 years as an English teacher and department chair at Whittier High School. She then moved to Santa Fe High School and assumed the position of vice-principal of curriculum and was promoted to principal where she has served since 1980. In addition, she has performed the duties of an associate professor at Whittier College since 1980.

She has been active in various community projects and has been honored as outstanding educator by the State of California and the Community Achievement Award by Toastmasters. She was also the nominee for the State of California for the U.S. Blue Ribbon Award for high school principals in 1991.

During her tenure at Santa Fe High School, she implemented a myriad of successful programs, such as the Student Honor Court, school-wide discipline plans, student guidance & curriculum councils, the Alumni Hall of Fame and Education Business Partnership Programs. In 1991, under Ms. Montgomery's direction, Santa Fe High School won the "distinguished school" competition at the local and State levels and advanced as a national finalist.

Mr. Speaker, on October 20, 1991, teachers, administrators, former students and civic leaders will gather to honor Ms. Thelma Montgomery for her tremendous contributions to the field of education and the community. I ask my colleagues to join me in saluting this exceptional woman for her outstanding record of educational service to the young people of my district.

TRIBUTE TO VERONICA PERRY:
SHE OVERCAME TRAGEDY AND
KEPT ON GIVING

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. RANGEL. Mr. Speaker, I rise to pay tribute to Ms. Veronica Perry, who succumbed Friday, October 4, to complications of heart surgery. She was 44 years old.

Ms. Veronica Perry may well be remembered as a "mother's mother." For most of her adult life she was an advocate for children, a teacher and an elected member of the community school board. Most of all, to the children of 114th Street in Harlem, where she lived, Ms. Perry was the surrogate mother who was always there.

A lifelong resident of Harlem and the fifth generation of her family to reside on 114th Street, Mrs. Perry was one of 13 children born to Ms. Eva Rutledge and the late Mr. Vincent Holder.

For many years, Ms. Perry was employed as a teacher at the Lenox Hill Hospital day care program. In 1984, she was elected to her first term as a member of the school board of Community School District 3. Her candidacy had been supported by the Sojourner Truth

Democratic Club, of which she was a founding member. At the time of her death, Ms. Perry was completing her third term and had risen to senior membership on the board.

In the early 1980's Ms. Perry played a pivotal role in the successful campaign to revitalize historic Wadleigh Junior High School on 114th Street, where she was the PTA president. Ms. Perry mobilized parents, and the political and civic leadership behind a drive that resulted in the renovation of the school building as well as upgrading of the curriculum.

This was but one of the child-driven initiatives on which Ms. Perry seemed to thrive and to which she gave herself completely. But beyond her civic contributions, she and her husband, Mr. Jonah Perry, Sr., were parents of three children.

In 1985, the Pery's were visited by a tragedy that shook all of New York. Their second son, Edmund, a promising prep high school student who had already been accepted to Stanford University, was slain by a New York City policeman under controversial circumstances. The incident sparked numerous demonstrations to protest Edmund's death, but also as an expression of support for Ms. Perry.

Despite this tragedy, she went on with her life, comforted by her remaining children, Nicol, 20, and Jonah, Jr., 24, a Cornell University graduate who plans to enter law school.

Ms. Perry's life exemplifies that of so many of Harlem's unsung heroes. All those mothers who give so much, and are so little recognized. Her life was a tribute to them.

Always caring, always sharing, always available, she overcame numerous little and large personal tragedies so that she might continue to give to others.

Ms. Veronica Perry is survived by her children, Nicol and Jonah; her husband, Jonah, Sr.; her mother, Ms. Eva Rutledge; and four sisters and three brothers.

SALUTE TO THE HAMILTON COVE
DESALINATION PLANT

HON. ELTON GALLEGLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. GALLEGLY. Mr. Speaker, I rise today to salute the new Hamilton Cove desalination plant, which has begun providing freshwater to my constituents on Catalina Island. Not only is the plant the first on the West Coast that converts seawater into drinking water, it also represents an unprecedented partnership between public and private interests.

At a cost of \$3 million, the plant provides 132,000 gallons of freshwater a day, almost one-third of the island's annual water consumption. Because Catalina Island has been particularly hard hit by California's drought, this plant is especially welcome.

I am also pleased that it was built as a joint venture by a private developer, the Whitehawk Partnership, and a public utility, Southern California Edison. By building the plant, Whitehawk was able to build its Hamilton Cove development, and the residents of Catalina Island now have a crucial source of

water to help meet their needs during dry periods such as this.

In addition, the reverse osmosis technology used at Hamilton Cove may prove invaluable to mainland Californians in the future as many communities are considering building desalination plants to help meet their water needs.

Mr. Speaker, I ask my colleagues to join me in saluting the Whitehawk Partnership and Southern California Edison for working together for their community.

INTRODUCTION OF HMONG VETERANS' NATURALIZATION ACT OF 1991

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. VENTO. Mr. Speaker, today I am reintroducing legislation which would relax certain naturalization requirements for Hmong veterans who served alongside United States forces in the Vietnam war.

The Hmong Veterans' Naturalization Act of 1991 recognizes the significant sacrifice made by thousands of Hmong and other Laotian highland groups who served in special guerrilla units in the Vietnam war from 1960 to 1975. These forces were recruited and trained by the Central Intelligence Agency and bore the brunt of fighting against the North Vietnamese and Pathet Lao forces. Although they were never inducted into the U.S. Army, these units were created, controlled and funded by the Defense Department through the CIA.

The consequences of Hmong's service in the Vietnam war was utterly devastating. The most conservative reports list 18,000 to 20,000 killed in combat between 1963 and 1971 with tens of thousands injured. In addition to the loss of life, the war also resulted in the loss of homeland for the Hmong. When the Communists took power after the war, the Hmong were targets for persecution and tens of thousands fled to refugee camps to save their lives.

The Hmong were known as capable fighters who made great sacrifices in the line of battle. Experts estimate that up to 40,000 served in the special guerrilla units in the peak years. These forces included men, women and children, some as young as 10 years old. The participation of the Hmong in U.S. operations in Southeast Asia—actively pursued and paid for by our Government—resulted in a severe displacement and loss of the Hmong population.

While it is obvious the Hmong served bravely and sacrificed dearly in the Vietnam war, many of those who did survive and make it to the United States are having a difficult time adjusting to life here. Many of the 100,000 Hmong refugees living in the United States are separated from their family members. Considering the importance of family to the Hmong, it is a great hardship for the Hmong to have family members scattered throughout the world with little chance for reunification. Fortunately there is something we can do to speed up the process of family reunification and ease the adjustment of Hmong into U.S. society, at no cost to the Federal Government.

The key to family reunification is citizenship. My bill would make the attainment of citizenship easier for those who served in the special guerrilla units by waiving certain naturalization requirements which are particularly difficult for Hmong people to meet. The greatest obstacle in becoming a citizen for the Hmong is passing the English test. This is due to the unique historical and linguistic circumstances of the Hmong people. The Hmong came from the highlands of Laos where there were few opportunities for formal education. More importantly, their language was an oral one. Written characters for the Hmong language have only been introduced recently, and whatever chances most Hmong may have had for learning the written language were disrupted by the war.

As a result, most Hmong came to the United States without the ability to read or write in their own language and with little or no formal education. The acquisition of English presumes prior experience with formal education and literacy skills. The Hmong have neither, and learning English is therefore extremely difficult for most Hmong, especially the middle-aged and elderly Hmong. Several studies have reported on the difficulty of English acquisition for the Hmong. Since the English test is also an insurmountable obstacle to the spouses and widows of Hmong veterans, and considering the great hardship they have endured as a result of their spouses' service, the legislation waives the English requirement for these Hmong as well.

My bill would also waive the residency and presence requirements for those who served in the Special Guerrilla Units to speed up the process of family reunification. Current law permits aliens or noncitizen nationals who served honorably during World War I, World War II, the Korean conflict, and the Vietnam war to be naturalized regardless of age, period of residence, or physical presence in the United States.

This legislation recognizes the brave service of the Hmong people and the extreme difficulty of acquiring the English language for the Hmong people. This legislation was developed by leaders of the Hmong community in Minnesota and has been endorsed by the Lao Family Community of Minnesota and the Hmong and American Veterans Alliance, a national organization made up of soldiers from both of these groups who served together in Southeast Asia.

In addition to helping reunite families separated by the passage of years and the distance of miles, the enactment of this bill would be an important component to the full integration of the Hmong into American society. Voting and other citizenship benefits would help the Hmong adjust to the radically different society they have moved to. Our refugee resettlement efforts, which I believe have had a mixed record of success, would also be helped by the passage of this legislation.

Mr. Speaker, the Hmong served the United States for 16 years. They suffered an irretrievable loss of life and homeland. I urge my colleagues support this important legislation which gives rightful recognition to a group too often forgotten in our society who served our interests when we asked them.

COMMENDING FANNIE MAE FOR CRA ASSISTANCE

HON. MAXINE WATERS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Ms. WATERS. Mr. Speaker, I rise today to bring to the attention of Members a new, innovative program created by the Federal National Mortgage Association, commonly known as Fannie Mae, to help lenders meet their Community Reinvestment Act [CRA] requirements.

I'd like to share with my colleagues Fannie Mae's newest service, FannieMaps, a new technology to help mortgage lenders nationwide identify and meet the affordable housing needs of low- and moderate-income neighborhoods in major cities.

FannieMaps uses the most recent census and U.S. Department of housing and Urban Development data to depict lower-income and minority neighborhoods in large metropolitan areas in all 50 States where housing affordability needs may be unmet. This allows mortgage lenders to easily identify and customize affordable mortgage programs to meet the special needs of low- and moderate-income neighborhoods in their lending areas.

The service uses census tracts to identify neighborhoods where the median income is less than 80 percent of the income level of the metropolitan statistical area [MSA]. The service also identifies concentrations of minority households within MSA's. FannieMaps provides three levels of color-coded maps, ranging from entire cities to individuals ZIP code areas, along with data on the income, race, and age of residents.

The service provides lenders with precise mapping and demographic data which can assist them in mounting special marketing efforts to increase the availability of affordable housing in the areas and the neighborhoods they serve.

Beginning in November, FannieMaps will be provided to Fannie Mae lenders through the company's electronic communications network, known as MORNET. Lenders will be able to view and print hard copies of the FannieMaps and accompanying demographic reports they select. The maps and data are free; lenders pay only for the computer time to transmit the material.

FannieMaps will enhance the efforts of commercial banks, savings and loans, and the mortgage banking subsidiaries of these lenders to meet their Community Reinvestment Act [CRA] requirements. Hopefully, this will lead to better CRA compliance and an expansion of CRA-type lending. Whatever we can do to encourage such lending is welcome, and Fannie Mae deserves credit for its efforts.

Mr. Speaker, I commend Fannie Mae for creating FannieMaps. I urge the Nation's mortgage lenders to avail themselves of this useful service.

ITALIAN-AMERICAN HERITAGE
AND CULTURE MONTH

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. ENGEL. Mr. Speaker, I rise today to thank my colleagues for joining me for the third year in a row in passing House Joint Resolution 260, legislation which will designate this month of October as "Italian-American Heritage and Culture Month."

During the past 3 years, the month of October has become a time of great celebration for the Italian-American community. Hundreds of activities have already been planned on both the local and national levels in recognition and celebration of the achievements of Italian-Americans.

As you know, some 25 million citizens make up the Italian-American community, representing one of the largest ethnic groups in the United States. There are thousands of Italian-American organizations and clubs throughout the United States who greatly contribute to the prosperity and progress of our Nation on a yearly basis, not to mention the individual Italian-Americans who have contributed to the United States in all aspects of life including art, science, civil service, military service, athletics, education, and politics.

"Italian-American Heritage and Culture Month" gives the American people the opportunity to highlight the many contributions and achievements of Italians and Italian-Americans throughout history. Most celebrated, of course, is this year's quincentennial celebration of Christopher Columbus' recorded discovery of the Americas. Also to be remembered are the contributions made by Enrico Fermi, one of the early pioneers of nuclear physics, and William Paca, an original signer of the Declaration of Independence.

In addition, Philip Mazzei, an Italian patriot and immigrant, is credited with coining the Declaration of Independence phrase "All men are created equal." During the American Revolution, he devoted much of his time and energy to the preservation of both religious and political freedom in America.

Finally, "Italian-American Heritage and Culture Month" gives us the opportunity to reflect upon the many common values and ideals shared between the American and Italian people. The importance of individuality, the protection of basic human rights and freedoms, and the advancement of mankind, are but a few of shared beliefs that bond our two nations together.

Mr. Speaker, we are giving a great honor to one of the largest ethnic communities in this country by passing this resolution and I am thankful for the many contributions that they have made to our society. I look forward to continuing this tradition in the many years ahead.

EXTENSIONS OF REMARKS

THE CULTURAL FESTIVAL OF
INDIA

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. GEPHARDT. Mr. Speaker, I had the honor of attending the Cultural Festival of India, which was held in Edison, NJ, from July 12 to August 11.

The thousands of Americans of Indian descent that attended the festival are representative of the large, active, productive Indo-American community which has contributed greatly to the economic, scientific, and educational advancement of America.

The festival also underlines the important cultural contributions of this community which has maintained strong ties with India through the generations.

During my visit I met Americans of Indian descent from across the country, many of whom had traveled from as far away as Missouri and Florida. They had brought their children to the festival to foster an understanding of the rich cultural traditions of India.

I commend the organizers, the volunteers, and the Indo-American community for this special celebration of their cultural heritage.

MARLOW INDUSTRIES RECEIVES
BALDRIGE QUALITY AWARD

HON. SAM JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. JOHNSON of Texas. Mr. Speaker, I am proud to announce that Marlow Industries of Dallas, TX, has been named a recipient of the Malcolm Baldrige National Quality Award. The Baldrige Award is the Nation's highest award given for excellence in management. This honor was bestowed on only three companies in America this year.

As a member of the Small Business Committee, I am especially proud that Marlow Industries won in the small business category. This Dallas manufacturer of thermoelectric cooling equipment, generators, and controllers began with five employees in the early 1970's. It now employs 160 people and is a recognized industry leader in a growing and competitive market.

Raymond Marlow, president of Marlow Industries, was fundamental in the establishment of the Texas Quality Consortium. This small business organization enables its members to share resources and ideas about quality assurance. Raymond Marlow's definition of quality is "continuous improvement through customer satisfaction and employee empowerment." Marlow Industries is a showcase for the Texas spirit of excellence through teamwork.

I salute Raymond Marlow and his team at Marlow Industries for their hard work and dedication to quality. They are truly a source of inspiration for all of America's businesses, large and small.

TRIBUTE TO GEORGE LEWIS
RUSSELL, SR.

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. DYMALLY. Mr. Speaker, I rise to pay tribute to a man that many considered to be a Capitol Hill institution. For 17 years George Lewis Russell, Sr. graced these hallowed halls, with a dignity and sense of dedication that made him a friend to all that were fortunate enough to be touched by him.

In his position as the Assistant Chief Clerk to Reporters, the man we affectionately referred to as George literally had a front row seat as we conducted the Nation's business. Yes, Mr. Speaker, when my friends on the other side of the aisle were in the well giving speeches, that moment was shared by George who sat directly behind whoever was speaking.

Mr. Speaker, aside from his duties here in the House of Representatives, George was a dedicated family man, active in his community, his church, and the affairs of his college, North Carolina A&T State University.

Mr. Speaker, George Russell always went the extra mile to help individuals seeking employment and was always encouraging to members and staff.

Unfortunately, there will not be any statues or buildings here on the Hill named after George Russell. However, we can all rest assured that this noble man will never be forgotten on Capitol Hill or in his community.

SUPPORT FOR H.R. 917

HON. MARILYN LLOYD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mrs. LLOYD. Mr. Speaker, the Social Security "Notch" issue has been the cause of a great deal of concern since the early 1980s. Although it has been the subject of hearings by the Subcommittee on Social Security, the measure has not been voted on by the Ways and Means Committee.

I have had and am continuing to receive many letters from constituents who feel that Congress' failure to act jeopardizes their financial condition. I am appalled when I hear that America's elderly population believe that we here in the Congress are unwilling to take corrective action. Those individuals born during the notch years are conscientious people who worked hard all of their lives and their concerns deserve to be heard not pushed aside. They are tired of being shortchanged on their Social Security checks. We have waited far too long to correct this situation and it is costing America's older population in lost benefits.

Mr. Speaker, H.R. 917 is a bipartisan effort that will restore fairness without jeopardizing the Social Security trust fund. In light of the overwhelming support for the bill, I believe it is time we resolve this matter. Let's act on the bill.

RECOGNITION OF THE FAIRLAWN
CREDIT UNION OF PAWTUCKET, RI

HON. RONALD K. MACHTLEY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. MACHTLEY. Mr. Speaker, I rise today to recognize the Fairlawn Credit Union of Pawtucket, RI.

Federally insured credit unions are unique financial institutions. Created to improve the quality of life through the principles of self help and cooperation, federally insured credit unions are passports to personal and financial opportunity and are, thus, worthy of recognition.

Federally insured credit unions are individual, independent cooperatives founded by people seeking economic advancement, and are passports to opportunity for people seeking a way to improve the condition of their lives and those of their families.

Federally insured credit unions call for the pooling of personal resources and leadership abilities for the good of the cooperative, encourage a regular habit of savings so those in need may borrow and foster the desire to repay loans so members may have access to credit when it is required.

Federally insured credit unions create opportunity in 79 nations around the world, so that 34,000 credit unions can serve the financial needs of 77 million members, associated through local, State, regional and international organizations sharing the same commitment to serving their members.

Federally insured credit unions are working to make financial democracy possible for the people of Poland, Hungary, Eastern Europe, and the rest of the world.

It is my pleasure to recognize Fairlawn Credit on International Credit Union Day, October 17, 1991, for its continuing interest in the welfare and development of credit union members, for the safety and security provided to the members' personal investment in the credit union, and for the many contributions made to the larger community.

SAINT JOSEPH'S CHAPIN STREET
HEALTH CENTER OF SOUTH
BEND FIFTH ANNIVERSARY, AND
PRESIDENT'S POINT OF LIGHT

HON. TIMOTHY J. ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. ROEMER. Mr. Speaker, it is with great pleasure that I join today in honoring the St. Joseph's Chapin Street Health Center in South Bend, IN. Today is a day set aside to celebrate the fifth anniversary of the founding of this facility, which has brought the best of public service together with the worst of our health care needs.

In 1986, sister Maura Brannick began the clinic known as St. Joseph's Health Center. This facility provides health care to members of our community who would in all likelihood go without otherwise. Sister Maura has orga-

nized a group of physicians who give selflessly of their time and energy in a volunteer capacity. Over 50 doctors work at the center each month, and twice as many more kindly accept the clinic's referrals. Add to this a network of nurses and other concerned professionals and laypeople who give their time and expertise, and you have a model example of what a community health care facility can be.

Mr. Speaker, at a time in our country when people in poverty receive their primary health care in hospital emergency rooms, it is gratifying to know that Sister Maura, her colleagues, and folks like them around the Nation are waging a war against disease and ill health in the neighborhoods that need it most.

So much is St. Joseph's Chapin Street a shining example of the best and brightest of community concern, that today, President Bush declared this place and its people the 584th Daily Point of Light for the Nation.

Mr. Speaker, St. Joseph's is not just a place for people who are sick or hurt. It practices, on a daily basis, preventive care, and particularly cares for our youth. It's antidrug and other programs focus on the character and integrity of our youth, helping them realize their self-worth and giving them the building blocks they need to create self-reliant and successful futures.

St. Joseph's caters to the whole community, though, and sponsors soup kitchens and other homeless people's programs, keeps our senior citizens healthy and involved, and continues to work with the disabled.

Mr. Speaker, the President is right on target in picking St. Joseph's Chapin Street Health Center as deserving of honor and our deep respect. They have not only provided a service to a needy and deserving part of the third district community, but have earned the admiration and respect of all of us. I am proud to know Sister Maura and her colleagues, and am doubly proud to represent such a fine facility and group of people.

CONGRESSMAN KILDEE WELCOMES
VFW COMMANDER IN CHIEF ROBERT
E. WALLACE

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. KILDEE. Mr. Speaker, I rise today to welcome the commander in chief of the Veterans of Foreign Wars, Robert E. Wallace, to the Seventh Congressional District. Throughout his career, Commander in Chief Wallace has demonstrated a lasting and enduring commitment to his Nation and his community.

As a veteran of the United States Marine Corps, Robert served in Vietnam from 1967 to 1968 as a lance corporal. He was twice wounded at the Battle of Hue and was later wounded near Khe Sanh. The latter wound resulted in the total loss of hearing in his right ear and his evacuation from the battle zone.

After his honorable discharge from the Marine Corps in 1969, Robert Wallace began a career in the banking industry, while simultaneously pursuing his college education. After 7 years of long hours and hard work, Robert

earned both a bachelor of science in management from Rutgers University and a masters degree in business administration from Fairleigh Dickinson University.

Along with his outstanding achievements in business and education, Commander in Chief Wallace was spared no effort in promoting the welfare and dignity of our Nation's veterans. His involvement in veterans affairs began while he was still a soldier in the jungles of Vietnam where he joined the Veterans of Foreign Wars [VFW]. After his discharge from the service, Robert served on the New Jersey Jobs for Veterans Task Force in 1972. In 1979 he received the VFW Young Veteran of the Year Award from the Department of New Jersey and the national organization of the VFW.

From 1980 to 1981 Robert Wallace served as the commander of the Department of New Jersey. He was the first Vietnam veteran and the youngest veteran to serve in this position. In 1981 Robert was appointed chairman of the New Jersey Veterans Day Committee and began serving his first term on the Veterans Service Council. He was also appointed to the New Jersey Jobs Training Coordinating Council. His outstanding service in these positions led to his appointment by Gov. Thomas H. Kean as New Jersey's first deputy commissioner on veterans affairs.

While serving in that position from 1988 to 1990, Wallace also became VFW junior vice commander in chief in 1989. Most recently, Robert was elected commander in chief at the 92d national convention in New Orleans in August.

A member of VFW Post 1851, Robert and his wife, Diane, have one daughter.

Mr. Speaker, it is an honor for me to rise today and recognize the outstanding lifetime achievements of this great American. Never has our Nation had a greater need for the kind of selfless commitment to the protection of human dignity that is exemplified by the life of Veterans of Foreign Wars commander in chief, Robert Wallace. He and the veterans he represents have placed their lives on the line to protect the freedom that too many of us take for granted. Moreover, they continue to sacrifice their time to improve the quality of life in communities across the Nation. We owe them a debt of gratitude that can never be repaid.

THE REPUBLIC OF CHINA ON
TAIWAN'S NATIONAL DAY

HON. DAVID E. PRICE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. PRICE. Mr. Speaker, I rise today to pay tribute to the people of the Republic of China on Taiwan as they celebrate National Day.

I had the opportunity to visit Taiwan 2 years ago, along with Representatives MARLENEE and HASTERT. This trip greatly increased my understanding of the nation's early struggles, its present successes, and its hopes for the future. I was particularly struck by Taiwan's impressive economic progress. In the last 40 years, Taiwan has turned from an impoverished country with few resources into a major player in the world economy.

Since that time, equally impressive political developments have been taking place in Taiwan. On December 2, 1989, the first island-wide elections were held since martial law was officially lifted in 1987. President Lee subsequently convened a National Affairs Conference and put forth an ambitious agenda for political reform. Over the next few years, the Republic will hold an election for a new national assembly and new parliamentary bodies, will implement further constitutional reforms, and finally, will hold a direct election of the Republic's President.

I trust these trends will continue. Taiwan's economic and political success are particularly important to me and to the large Chinese community in my district. Taiwan is also vital to the economic future of my State; it has become a major market for agricultural, electronic, and other products from North Carolina.

Mr. Speaker, on the Republic of China's 80th National Day, I join my colleagues in extending to President Lee Teng-hui and the citizens of Taiwan our hearty congratulations and in expressing our high hopes for continuing friendship and cooperation in the years to come.

TRIBUTE TO JIMMY T. ANDERSON

HON. GEORGE (BUDDY) DARDEN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. DARDEN. Mr. Speaker, today I would like to honor the memory of a longtime friend of mine, Mr. James T. Anderson of Marietta, GA, who died October 6 at age 88.

Mr. Anderson, or "Jimmy T." as he was affectionately known to one and all, contributed greatly to the betterment of Marietta and Cobb County throughout his long, productive lifetime.

A member of one of Cobb County's finest pioneer families, he and his wife, the late Jennie Tate Anderson, were quick to welcome newcomers moving into their booming community. I well remember when I, as a young man just arriving in an area not always hospitable to strangers, was made especially welcome and introduced around by Mr. Jimmy T.

Throughout his life he was active in civic affairs, a kind and generous man who will always be remembered with respect and affection for his unselfish contributions to our community.

Born in Marietta on March 12, 1903, he attended Marietta High School and graduated from the Eastman-Gaines School of Business in Poughkeepsie, NY.

After working for the Trust Company of Georgia for a short period, he opened a Chevrolet dealership, which he operated for 60 years before retiring in 1987.

He served on the Atlanta Metropolitan Foundation for 27 years, was a member of the Kennesaw College board of trustees for 22

years, served as an elder in the First Presbyterian Church of Marietta and was chairman of the James T. Anderson Boys Club board of trustees.

The Cobb Civic Center's fine arts theater was named for Mrs. Anderson, who was an outstanding person and community leader in her own right.

It was my privilege to have been close to this progressive couple and their fine family. I have been good friends with their children, and my son and daughter are friends of their grandchildren.

The Anderson family includes three sons, James Thomas Anderson III and William Tate Anderson of Marietta, and Randall Montgomery Anderson of Alexandria, VA; a daughter, Virginia Kent Anderson-Leslie of Decatur; and six grandchildren, Mary Kent Anderson, Byron Thomas Anderson, Randall Montgomery Anderson, Jr., Katherine Tate Anderson, Virginia Campbell Leslie and Katherine Elizabeth Leslie.

Our sympathies are with them, but we find comfort in the knowledge that Mr. Jimmy T. died peacefully in his sleep after living an exemplary life.

COMMEMORATING COLUMBUS DAY

HON. J.J. PICKLE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. PICKLE. Mr. Speaker, "In fourteen hundred ninety-two Columbus sailed the ocean blue"—this is one fact on which all of us still agree—that some 500 years ago, the Italian navigator Christopher Columbus set sail with the *Nina*, the *Pinta* and the *Santa Maria* on a quest for the Orient.

Though scholars differ on whether Columbus was the first nonnative to land in the Americas, there is no doubt that his voyage forever linked the Eastern and Western Hemispheres.

This October 12, America will celebrate Columbus Day as we always have. But next year, in 1992, the world will commemorate the quincentenary of Columbus' historic voyage. It is of great national significance to the United States. Literally, we were born on this date.

In honor of the upcoming anniversary, PBS aired an outstanding program this week, called "Columbus and the Age of Discovery." I urge my colleagues who did not see the program to try and get a copy—it is outstanding.

This Columbus Day I urge all Americans to take a moment to celebrate the spirit of Columbus and his many accomplishments.

REPUBLIC OF CHINA ON TAIWAN
CELEBRATES 80TH BIRTHDAY

HON. RICHARD K. ARMEY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. ARMEY. Mr. Speaker, I join my friends and colleagues today in sending my best wishes to President Lee Teng-hui and Premier Hau Pei-ts'un on the 80th anniversary of the Republic of China, the 10th day of October, 1991.

The Republic of China is an important ally of the United States. Its people share our beliefs in democracy, free enterprise, and human rights. With those beliefs, they have achieved one of the highest standards of living in the world today and are among our most valued trading partners. As the volume of trade between our nations increases, I have no doubt that we will continue to enjoy fine trade relations.

May the leaders and people on Taiwan have continuing political freedom and economic growth.

NEW MEXICO MILITARY INSTITUTE
CENTENNIAL CELEBRATION

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 1991

Mr. RICHARDSON. Mr. Speaker, my colleagues will be pleased to learn that an outstanding educational institute in New Mexico is celebrating its 100th anniversary this fall. New Mexico Military Institute, located in Roswell, NM, and known as "the West Point of the West," was founded in September of 1891.

NMMI has grown from a one classroom building with 38 students and a faculty of five to a \$100 million campus with a well-disciplined corps of cadets nearly 1,000 strong, taught by an outstanding faculty of 70 and cared for by a dedicated staff of more than 100.

NMMI is a State-supported, coeducational 4-year high school and 2-year junior college, operated in a military setting. This outstanding facility attracts a select group of students from more than 40 States and a dozen countries.

A group of 100 distinguished alumni have undertaken a centennial celebration fundraising campaign with a goal of raising \$8 million. The money will be used for scholarship endowment, cadet activities, academic program enhancement, and campus enhancement.

I urge my colleagues to join me in congratulating New Mexico Military Institute on its first century of excellence and wishing this fine institution our best wishes as it begins its second century of public service.