SENATE—*Thursday, March 9, 1995*

(Legislative day of Monday, March 6, 1995)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the Honorable JOHN ASHCROFT, a Senator from the State of Missouri.

PRAYER

The guest chaplain, the Reverend Dr. Neal T. Jones, Columbia Baptist Church, Falls Church, VA, offered the following prayer:

Let us pray:

Gracious Heavenly Father, we thank You for the support of our constituents: optimists, pessimists, and realists. We ask Your help in passing legislation that will meet the needs of all our people.

Save us from optimism that exaggerates human goodness and ignores evil capacities. Deliver us from pessimism that looks at light and calls it darkness. Deliver us from pessimism that cloaks the world in black. Also, take us beyond the borders of realism. We need more than diagnostic accuracy and cold verdicts of limited human insight.

We, therefore, ask You to raise us above optimism, pessimism, and realism to hope. Help us to trust You, the One before, after, and within—always in charge of history. We praise You for giving us existential usefulness because of eternal trust.

In Jesus' name. Amen.

The PRESIDING OFFICER. Thank you, Reverend Jones.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. THURMOND].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 9, 1995.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN ASHCROFT, a Senator from the State of Missouri, to perform the duties of the Chair.

STROM THURMOND,
President pro tempore.

Mr. ASHCROFT thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, this morning the leader time is reserved, and there will now be a period for the transaction of routine morning business until the hour of 11 a.m. with Senators permitted to speak therein for up to 5 minutes each with the following Senators to speak for up to the designated times: Senator THOMAS 10 minutes; Senator BAUCUS for 25 minutes; Senator DASCHLE for 30 minutes; Senator MCCONNELL for 10 minutes; and, Senator BREAUX for 15 minutes.

At the hour of 11 a.m. the Senate will resume consideration of H.R. 889, the supplemental appropriations bill.

We expect rollcall votes throughout the day and into the evening.

I am not certain how many amendments are pending. I guess it depends upon the disposition of one particular amendment. We will see what happens as we hopefully make progress on this important bill today.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 11 a.m. with Senators permitted to speak therein for up to 5 minutes each.

Mr. THOMAS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

Mr. THOMAS. I thank the Chair.

(The remarks of Mr. THOMAS pertaining to the introduction of S. 518 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BAUCUS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, what is the pending business?

The ACTING PRESIDENT pro tempore. The Senate is conducting morning business. The Senator from Montana is recognized to speak for up to 25 minutes.

Mr. BAUCUS. I thank the Chair.

(The remarks of Mr. BAUCUS, Mr. CONRAD, and Mr. DASCHLE pertaining to the introduction of the legislation are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. DASCHLE addressed the Chair.

(The remarks of Mr. DASCHLE, Mr. DORGAN, Mr. BUMPERS, Mr. KOHL, and Mr. FORD, pertaining to the introduction of S. 519 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. MCCONNELL addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Kentucky is recognized to speak for up to 10 minutes.

Mr. MCCONNELL. I thank the Chair.

LEGAL REFORM

Mr. MCCONNELL. Mr. President, the House of Representatives is in the midst of Legal Reform Week and on its way to passing three bills which, if enacted, would dramatically overhaul and improve our civil justice system. So, Mr. President, the first thing I would like to do is commend the House for its determination and its commitment to change the legal system.

With the exception of the general aviation bill last year, no court reform legislation of any sort has ever gotten anywhere in the Congress.

So the House this week is about to do something truly historic. Over in the House and over here I hope we now realize the civil justice system is broken.

Injured parties wait too many years to have their cases heard. While a few win big damage awards, many people suffering personal injuries do not get adequately compensated for those injuries. We know that for every dollar spent in America in these tort cases only 43 cents makes it to the injured party and 57 cents is taken up by the courts and the lawyers; 57 cents out of every dollar for transaction costs. That is not civil justice. More than half the money goes to transaction costs—lawyers, and expert witness fees, as well as administration of the court system.

Not only do victims fare poorly in the current legal system, but scarce economic resources are drained from more productive uses. Municipalities and nonprofit organizations must absorb spiralling insurance costs, threatening the important public services they provide. No small businessman can afford to be without a lawyer because of the liability maze. And, ultimately, the burden falls on the American people—as taxpayers and consumers, paying more for Government services and higher costs at the checkout counter.

In fact, enactment of legal reform would give the American people a much deserved tax break—a break from the litigation tax that is strangling our

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

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economy. This tax break, unlike all others, will not even require a budgetary offset. And, even more significantly, it will not impact the Social Security trust fund.

Perhaps if we add some specific language protecting Social Security to these bills, we will pick up a few Democrat votes. And, maybe then the President could support legal reform. Because as we learned from Attorney General Reno this week, the administration is strongly opposed to the legal reform effort. Interestingly, the administration's unhappiness with these initiatives focuses on federalism—State's rights. I am quite amazed by this approach; after all this administration has not met a problem that could not be solved without a new or expanded Federal program. We only need to remind ourselves of the health care debacle. It is only on this issue—legal reform—that they have suddenly found the 10th amendment.

The fact is, the problem is a national one, and Congress has ample power to act, consistent with the commerce clause of the Constitution. Former Judge Robert Bork has eloquently disposed of the federalism issue in a letter he recently wrote to the Speaker. I ask that Judge Bork's letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, DC,
February 27, 1995.

Hon. NEWT GINGRICH,
Office of the Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I understand that several provisions either already in H.R. 956, the Contract With America's legal reform provision, or proposed to be included in it, have been criticized as unwarranted intrusions on the authority of the States.

The provisions include virtually all the reform measures that have been discussed over the previous several Congresses, including limits on punitive or non-economic damages and joint and several liability (whether applied to product liability suits or broader categories of cases); defenses relating to compliance with applicable federal regulations; regulation of contingency fees and other aspects of attorney conduct; and various statute of limitations reforms.

There can be little question that these reforms are well within the scope of Congress' authority under the Commerce Clause of the Constitution as it has been interpreted for many years. Beginning in the 1930s, the courts have read this Clause as a comprehensive grant of authority to Congress to regulate virtually any type of activity affecting the national economy. The measures under discussion indisputably fall within this broad category of regulation.

As you know, I have long believed, like many scholars and jurists (and many Members of Congress), that these broad interpretations of the Commerce Clause are questionable, and arguably out of keeping with the scheme of coordinate sovereignty intended by the Framers of the Constitution. Rather than simply resting on the federalism case law, therefore, I believe those measures are justifiable and necessary to protect the balance between State and Federal authority contemplated by the Framers. They could not have foreseen the spectacular growth, complexity, and unity of today's economy. It cannot be said with any certainty that they would not have passed a measure like H.R. 956 in today's circumstances.

The problems addressed by H.R. 956 are national problems. That is true not only because interstate commerce is affected, and not only because products and services are made more expensive as insurance costs rise, but also because the plaintiffs' tort bar chooses to sue in jurisdictions where awards of compensatory and punitive damages are highest. As a consequence, a state like California or Texas can impose its views of appropriate product design and the penalties for falling short on manufacturers and distributors across the nation. This is a perversion of federalism. Instead of national standards being set by the national legislature, national standards are set by the courts and juries of particular states.

No problem more preoccupied the Constitutional Convention than the necessity of protecting interstate commerce from self-interested exploitation by the States. Madison observed in Federalist No. 42 that no defect in the Articles of Confederation was clearer than their inability to protect interstate commerce. And in Federalist No. 11, Hamilton made clear that one of the key purposes of the new Constitution was to prevent interstate commerce from being "fettered, interrupted and narrowed" by parochial state regulation.

The civil justice reforms under discussion are all designed to vindicate this central constitutional purpose. It can no longer be disputed that abusive litigation is having a profoundly adverse impact on interstate commerce. Indeed, a growing body of evidence suggests that the very purpose of much of this litigation is to discriminate against interstate commerce on behalf of local interests. Although discrimination of this type was anticipated by the Framers, the misuse of litigation to achieve this effect is a relatively recent development. It is not surprising, therefore, that Congress has not previously found it necessary to regulate in this area.

It is thus neither inconsistent nor hypocritical for Congress simultaneously to protect interstate commerce from parochial discrimination and to protect States and localities from unwarranted federal interference. Both steps are essential to maintain the constitutional balance established by the Framers. Clearly, over the last fifty years the overwhelming trend has been towards the unwarranted expansion of Federal authority at the expense both of the States and of individual liberties, and Congress can and should reverse that trend. But this fact should not blind us to the continuing necessity of protecting interstate commerce from parochial, discriminatory regulation by states and localities. Federal intervention for this purpose is not merely constitutionally permissible, it is important to vindicate the Framers' constitutional design.

Sincerely,

ROBERT H. BORK.

Mr. MCCONNELL. Mr. President, there is only one objection to reforming the legal system. And it is the objection of the trial bar. They may be getting beat in the House, but they have not really begun to fight. We will see them use their muscle in the Senate. They will throw everything they have at us. They will wrap themselves in the tragic stories of real people who have suffered injuries. And they will let Ralph Nader and his network of organizations which they—the trial lawyers—fund argue on their behalf.

Contrary to their assertions, our reforms will not hurt victims. We want to help victims get fairly compensated without long, drawn-out litigation. We want to encourage those responsible for injuries to settle with injured parties early. And, the House bill moves in the right direction.

But as the debate shifts to the Senate, I want to encourage my colleagues to look seriously at the McConnell-Abraham bill, S. 300. Our bill reverses the incentive structure of the legal system. We set up rewards for early settlement. We want to put more money in the hands of victims. Our limitation on attorney contingent fees, as the Washington Post editorial page noted this week, will do just that.

Mr. President, I ask unanimous consent that the Washington Post editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 8, 1995]

CIVIL JUSTICE REFORMS

House Republicans are moving quickly to pass a series of bills designed to reform the civil justice system. At least three separate measures are expected to go to the Senate before the weekend: a bill concerning the payment of attorneys' fees, another making changes in securities fraud law and a third setting new rules for the payment of punitive damages and changes in product liability law.

Not every bill deserves support in its present form. But there is no denying that the majority party has taken on a problem that has been festering for some time. In their favor, it should also be noted that some of the more defective provisions of the "Contract With America" on this subject have already been improved by compromise and will probably be further fixed by the Senate.

The "loser pays" provisions of the first bill, which was passed yesterday, would have required unsuccessful litigants to pay winners' lawyers fees. It was always a bad idea. Taking any case to court would have been extremely risky, especially for those of modest means. As originally drafted, the bill deserved to be defeated. But it has been modified so that a loser must pay only if he has rejected a settlement offer and after trial is awarded less than that offer. Better, but still not perfect. The Senate should consider an alternative offered by Sens. Mitch McConnell and Spencer Abraham that would provide an incentive to litigants to settle (immediate payment and hourly attorneys' fees) and a penalty (reduced contingency fees in some cases) to attorneys who don't. Both measures are designed to encourage early settlement of disputes, but the McConnell-Abraham bill is less Draconian.

Securities fraud provisions have also been softened to take into account some of the suggestions offered by the chairman of the Securities and Exchange Commission, Arthur Levitt. The problem here—frivolous class-action lawsuits against a company as soon as its stock drops—is a real one. As reported by the House Commerce Committee,

this bill drew support from almost half the Democrats. But additional changes may be warranted to protect stockholders in meritorious cases.

The most hotly contested bill will be considered last. It would limit punitive damages in all civil cases to three times compensatory damages including pain and suffering, or $250,000, whichever is more. It would also narrow the risk of manufacturers' and sellers' liability in certain cases involving defective products. Many of the latter provisions make sense. Why not limit damages if the user has altered or misused the product, or if the accident was caused by drug or alcohol abuse? As for punitive damages, reform is overdue. Guidelines and limits must be set, whether caps are $250,000 or $1 million or something higher. Juries are at sea and sometimes come in with awards that are neither reasonable nor justified.

Yes, the fear of high punitive damages may keep manufacturers on their toes. But so would the fear of large fines payable to the public treasury in case of egregious misconduct. The system of providing unpredictable multimillion-dollar awards to single plaintiffs in order to deter corporate misconduct is unfair and inefficient. A shift to fines would make sense. Barring that change, clear guidelines on punitive damages are needed.

Mr. McCONNELL. Mr. President, our early offer provision, which builds upon a bill introduced by House Minority Leader GEPHARDT 10 years ago, will pay victims all of their losses, while taking many cases out of the court system altogether.

Our Nation is suffering from, as one editorial cartoonist called it, lawsuitenitus. It is a contagious disease and it is raging at epidemic proportions. The cure is a strong dose of legal reform. The only ones who will not like the medicine are those who thrive on the disease and profit from the spread of lawsuitenitus by earning huge fees.

Mr. President, we will have a number of bills here in the Senate to consider—the McConnell-Abraham Lawsuit Reform Act; the McConnell-Lieberman-Kassebaum Health Care Liability Reform and Quality Assurance Act; the Product Liability Fairness Act will be introduced next week, and there will be other initiatives. I look forward to comprehensive hearings on these bills, in the Judiciary, Commerce, and Labor Committees.

I am genuinely excited about the possibility of something happening on this issue. I remember being here 10 years ago as chairman of the Courts Subcommittee of Judiciary in 1985 and 1986, and we had numerous hearings on the subject of tort reform. But I knew we had no chance. We have had no chance for years. One of the positive results of last year's election, Mr. President, is that civil justice reform is now on the front burner and that genuinely excites this Senator who has had a great interest in this issue for many, many years.

And, most importantly I am hopeful we will enact reforms which give the American people a legal system that is fair, equitable, and accessible for the resolution of their disputes.

Mr. President, I thank you for your time.

I yield the floor.

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

THE CONGRESS CAN BREAK THE TELECOMMUNICATIONS POLICY STALEMATE

Mr. BREAUX. Mr. President, for more than 10 years the Congress has deferred to Federal courts on making and shaping telecommunications policy. Antitrust law intended to remedy anticompetitive practices when AT&T dominated all facets of America's telecommunications services is the basis of court controlled communications policy. The resulting breakup of AT&T in 1983–84 under Judge Greene's modified final judgment is still the policy basis for keeping the brakes on the future development of this critical industry: Telecommunications is the engine of America's continuing race into the information age.

Technical complexities and the massive scale of economic returns for potential competitors in the industry have made it difficult to arrive at any industry-led agreement on fair and just terms for bringing full competition to reality. Certainly such an agreement would simplify congressional efforts to unleash the industry from Federal court edicts so that the benefits of open competition will bring new and lower cost services, increased employment, and a continually improved telecommunications infrastructure.

Right now, Mr. President, between 50 and 65 percent of all U.S. jobs involve information processing, goods, or services; 90 percent of jobs created over the last 10 years were information related.

But there is more to come if we in the Congress can fashion reasonable legislation for evenhanded treatment of potential major competitors. Telecom giants are poised to spend billions over the coming 10 years to restructure their networks. One estimate of capital spending by the Bell companies alone on the information highway for equipment and infrastructure between 1994 and 1998 is $25 to $50 billion.

Mr. President, I believe that we can supercharge and sustain this potential growth if we fashion communications laws that will assure all telecommunications competitors that each of them will have a fair chance to thrive in fully competitive markets. We have a situation now in which each competitor is fearful of a law that will give an unfair advantage to equally powerful competitors.

As I see it, Mr. President, the key to establishing open competition in telecommunications is to deliver a fair process for freeing the grip that Bell operating companies now have on the local exchange system. Ideally, Mr. President, if any telecom carrier can have interference-free, open access to the local exchange to fully compete for the delivery of telecommunications, video, and information services to homes and businesses and at the same time allow for the regional Bells to have access to and the ability to provide long distance service for their customers, we would have created the stimulus for maximum growth in this industry.

But the Bell operating companies, Mr. President, are understandably reluctant about engaging in a process of enabling open access to the local exchange if it means tying their hands while equally strong competitors are raiding their customer bases. I am considering legislation that would require the Bells to provide to competitors interconnection to Bell company local exchange switches; provide access to network features on an itemized basis; provide technology that will allow consumers to move to a competitor and keep the same telephone number, and take other steps to assure State and Federal regulators that their systems are open to full competition.

The Bells are concerned, Mr. President, that this process of opening up the local loop under some legislative proposals will not be satisfied until competitors: Long distance, cable television, electric utility companies with massive capital, and customer bases of their own will have permanently eroded Bell Co. customer bases. This is not a situation, Mr. President, of a world-dominant AT&T competition with an upstart, customer-poor MCI in the early 1980's. Major Bell company competitors are customer rich, and they are capital rich. They are more than capable, Mr. President, of competing on a level playing field.

I have discussed these issues and my suggestions with the Long Distance Companies Coalition, with cable television representatives, and with Bell Co. executives, and they agree that my idea offers a possible compromise and is worth further discussion.

I believe that if we can assure each competitor, region by region, that none of them is to have a headstart or an unfair advantage in the race to acquire customers for new services, that we can reach an accommodation that will lead to the passage of important and far-reaching telecommunications legislation in 1995.

I believe that we can do this, and I believe it is urgent that the Congress direct our attention to this in this session. I urge my colleagues to help and join me in crafting a workable telecommunication fair competition amendment. I think my suggestion is one that can be ultimately agreed to by both the long distance carriers, the

cable companies, as well as the regional Bells. It is an idea and a concept that needs further discussion, further debate, and further exploration by the various interests that are going to be affected by it. I think it does provide us an opening which I think is significant and one that hopefully the companies and people affected will take advantage of.

Mr. President, I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

EXTENSION OF MORNING BUSINESS

Mr. REID. I see the Senator who offered an amendment on the floor and a Senator who is going to speak.

The time for morning business is about to expire. I ask unanimous consent that I be allowed to speak as in morning business until 5 after the hour.

The PRESIDING OFFICER. Without objection, it is so ordered. Morning business is extended until 11:05.

HEALTH CARE

Mr. REID. Mr. President, as most know, I offered an amendment on Social Security that led ultimately to the defeat of the balanced budget amendment. I am glad that we had the debate on the balanced budget amendment. I think, No. 1, it indicated that we have a problem with the deficit. No. 2, we need to do something about the deficit, and No. 3, we should not use Social Security as a method of trying to mask the deficit.

Mr. President, while we are having all this talk about a balanced budget, one of the areas we have not talked about and that we should talk about is health care. Why should we talk about health care?

Mr. President, one of my colleagues on the other side of the aisle was quoted in the Washington Post on February 15 saying, "Health care is not very bright on anybody's radar screen, if it shows up at all."

Mr. President, it may not show up on the radar screen of some Senators in this body, but it shows up on the radar screen of the people of America. Health care is still brightly flashing in the minds of the American public.

The Gallup Poll taken before the end of last year, completed December 30, showed that almost 75 percent of the American people felt that reform of the country's health care system should be a top or a high priority for Congress within the first 100 days.

Mr. President, nobody is talking about health care. We should talk about health care. A CNN poll showed that approximately 60 percent of those surveyed say that if a major illness were to occur in their family, they could not handle the costs of that major illness at all. There is a problem with health care. If we are wondering why the deficit is being driven up, we need look no place else other than the high cost of health care. There are interesting phenomenons occurring in the country. We have some managed care operations that are ongoing.

We find that doctors are not being paid as much, hospitals are not being paid as much, but the consumer, the patient, is being charged more. Where is that money going? Who is the great middleman that is making all this money? Who is that? And should we identify him? Health care costs are increasing and we should do something about it.

Mr. President, I received a letter from a friend of mine in Las Vegas who is a physician. He was complaining about a patient who was injured in a car accident in California, a Nevada resident. This patient was injured and spent 31 days in the hospital.

Now, how much would a hospital bill be for a day? Would it be $1,000 a day, $2,000 a day, $3,000, $4,000, $5,000, $6,000, $7,000, $8,000, $9,000? Ten-thousand dollars a day is what it cost the patient before he was allowed to come back to Nevada; $10,000 a day is what it cost that patient in the hospital.

I think, by any standards, that is steep, and I think certainly, Mr. President, we should be concerned about that.

If we are wondering why we are having trouble balancing the budget, let us look at health care. A man spends 31 days in the hospital and his bill is $278,000 for the hospital and $33,000 for the physician.

Well, health care may not be on the screen of some Members of this body, but health care costs should be on the screen of every one of us. Health care costs are insurmountable for State and local governments and the Federal Government, even though we do not talk about it any more.

We brought a health care reform bill on the floor last year. We debated it at length. We lost the issue. Now I guess we are just not going to talk about it any more, even though health care cost is the No. 1 cost driving up deficits all over this country.

Uninsureds—I am only talking about uninsureds, I am not talking about underinsureds—uninsureds, Mr. President, have increased in the last 2 years by 2 million people. Now it is up to 41 million Americans. Eighteen percent of the people in the State of Nevada have no health insurance.

We have introduced legislation through the minority leader, certainly not nearly as comprehensive as last year—and that is an understatement—but we have introduced legislation to address these problems. I direct this body's attention to S. 7, which deals with some of the big problems facing health care, including paperwork reduction, administrative simplification, to help in rural areas. I see my friend from Illinois on the floor. He has been a leader in trying to provide health care for rural Americans.

Specifically, S. 7 will provide portability, limit preexisting condition exclusions, prohibit companies from raising rates when consumers get sick, and require that all insurers offer at least one plan with the same benefits available to Members of Congress.

The bill will also provide assistance for families and small businesses through tax incentives and modest subsidy programs. Specifically, this bill will reinstate the self-employed tax deduction, a proposal supported by 50 Members of this body in a letter to the majority and minority leaders.

S. 7 will reduce paperwork and provide administrative simplification by implementing standard billing and claims forms. This legislation also provides privacy protection for an individual's health records, strengthens fraud and abuse efforts, and reforms our medical malpractice system.

Two other elements in the bill which I particularly support are measures to provide cost and quality information to consumers and the provisions to enhance rural health care delivery. By providing consumers with accurate cost and quality information on health plans we can put the buying power in the hands of the consumer.

S. 7 will help rural areas establish telemedicine networks and financially viable rural health plans. The Washington Post in its health section recently cited a University of North Carolina at Chapel Hill study which found that of the 50 million Americans living in rural areas, more than 21 million are in locations that don't have enough health care professionals to meet their needs. Moreover, the study found that 2,000 primary care doctors are needed in rural areas.

The elements of this bill were supported by both sides of the aisle in last year's debate and were contained in several health care proposals put forth by both Republicans and Democrats. Thirty-three Democratic Senators have rallied around a sound set of principles for health care reform and invited our Republican colleagues to join us in addressing this important issue. These principles includes: Insurance market reform, 100 percent health insurance tax deductibility for the self-employed, affordable coverage for children, assistance for workers who lose their jobs to keep their health coverage, and a wide range of accessible and affordable home, and community-based options for families caring for a sick parent or a disabled child.

I believe these principles are ones we, as Members of the Senate, and representative of our constituents, can support. S. 7 and the Democratic principles for reform are a sound starting

point. I remain committed to working for reform of our health care system, and I hope we can work together to provide working American families with the quality health care they deserve, at a price they can afford.

I would only say, Mr. President, that if we ignore health care in this body, we are ignoring the No. 1 cost issue facing people all across America. And before we stop hearing the words "balanced budget" and all the debates that took place in that regard, let us not forget about health care. If we are ever going to address the deficit that accumulates yearly in this country, we must be concerned with health care or we will never handle the problem.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER (Mr. KYL). The Senator from Nebraska.

If I may interrupt the Senator from Nebraska, under the previous order, morning business was to expire at 11:05.

Mr. EXON. I ask unanimous consent that morning business be extended for at least 5 minutes, for the purpose of brief remarks by the Senator from Nebraska.

The PRESIDING OFFICER. Is there objection to extending morning business by 5 minutes?

Mr. EXON. Mr. President, I would just like to say a few words with regard to the bill that was introduced today.

As the body well knows, I favored the constitutional amendment to balance the Federal budget. I am sorry that it did not pass. But now that it has failed, we need to press ahead to build what discipline we can into the budget process.

We are introducing today a statutory requirement that would have most, if not all, of the teeth that the constitutional amendment to balance the budget would have instituted.

The bill requires the Budget Committee to report out a resolution that shows us when we will get to a balanced budget without using the Social Security trust funds.

The practical effect of this requirement would be to require the Government to run surpluses in the unified budget, surpluses that would start to reduce—and I emphasize, reduce—the debt held by the public and prepare us for the financial needs of the next century.

Our bill enforces this requirement with a 60-vote point of order against budget resolutions that do not show how we get to balance.

The bill allows for waiver in wartime and in recessions, using the same mechanisms that Congress put in the Gramm-Rudman-Hollings law.

As for the schedule, the Budget Act requires the Senate Budget Committee to report a budget resolution by April 1.

The Budget Act requires the Congress to complete action on the budget resolution conference report by April 15. I hope we can meet that deadline.

Last year, the Senate Budget Committee reported the budget resolution on March 18.

The year before last, when Congress enacted the deficit reduction bill that has reduced the deficit by over $600 billion, the Senate Budget Committee reported the budget resolution on March 12, and Congress completed action on the conference report on April 1.

We look forward to working with the Republican majority to expeditiously fashion a budget resolution that shows us how we will get to a balanced budget and get on with the obvious work in this area that we must do.

I reserve the remainder of my time and I yield the floor.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES!

Mr. HELMS. Mr. President, for about 3 years I have been making daily reports to the Senate regarding the exact Federal debt as of the previous day.

We must pray that this year, Federal spending will begin to be reduced. Indeed, if we care about America's future, Congress must face up to its responsibility to balance the Federal budget.

As of the close of business yesterday, Wednesday, March 8, the Federal debt stood (down to the penny) at $4,848,281,758,236.20, meaning that on a per capita basis, every man, woman, and child in America owes $18,404.16 as his or her share of the Federal debt.

It's important to note, Mr. President, that total Federal debt a little over 2 years ago (January 5, 1993) stood at $4,167,872,986,583.67—or averaged out, $15,986.56 for every American. During the past 2 years (that is, during the 103d Congress) the Federal debt has escalated by more than $6 billion, which illustrates the point that so many politicians talk a good game at home about bringing the Federal debt under control, but vote in support of bloated spending bills when they get back to Washington.

If the Republicans do not concentrate on getting a handle on this enormous debt, their constituents are not likely to overlook it 2 years hence.

ATTACKS IN PAKISTAN

Mr. KERRY. Mr. President, yesterday we learned of the attack on three Americans on their way to work at the United States Consulate in Karachi, Pakistan. While they were stopped at a traffic light, gunmen jumped out of a yellow taxi and opened fire with AK-47 assault rifles.

Two of the Americans were killed: Jackie van Landingham, a secretary; and Gary Durell, a communications technician. And I know I speak for every Senator when I extend our deepest sympathy to the friends and families of these two Americans who were killed in service to their Nation in a changing and often dangerous world.

Mr. President, the third American, a young man from Framingham, MA, Mark McCloy, who worked in the consulate's post office, was injured in the attack and was taken to Agha Khan Hospital. He is now in stable condition. Last evening I spoke with his mother, Muriel McCloy, in Massachusetts, and I have assured her that the United States is doing everything we can to bring those who are responsible for this terrorist act to justice; and I assured her that we would do everything we can to bring her son home safely.

Mr. President, this attack reminds us of the dangers that exist in the world and the courage of those who choose to serve their country in spite of those dangers. We cannot underestimate the commitment of foreign service personnel who serve at a time when the post-cold-war world realigns—and the national, regional, religious, and cultural interests of peoples in every country are put to the test of sovereignty and self-determination. The courage and contribution of the men and women of the foreign service in this new world deserve our admiration and our respect.

So, Mr. President, though we are saddened by this tragedy, we are also strengthened in our appreciation of the contribution of those who serve. To the thousands of Americans around the world who have suffered the separation from families and home, from friends and loved ones, to embark on a great adventure to promote peace, understanding, and the principles of American foreign policy—in the name of those who have paid the ultimate price—we salute you.

Mr. President, for Jackie van Landingham and Gary Durell the adventure came to an end in a distant land, but for those of us at home who reap the benefits of their sacrifice, their memory will never die.

Mr. President, in light of this tragedy let us honor the thousands of men and women in the foreign service who ask little from us, but contribute a lot. And let us pray for the speedy recovery of Mark McCloy, and for the friends and families of those who, yesterday, gave their lives in service to their country.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 889, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 889) making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness for the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Bumpers amendment No. 330, to restrict the obligation or expenditure of funds on the NASA/Russian Cooperative MIR program.

Kassebaum amendment No. 331 (to committee amendment beginning on page 1, line 3), to limit funding of an executive order that would prohibit Federal contractors from hiring permanent replacements for striking workers.

AMENDMENT NO. 331

The PRESIDING OFFICER. Pending is amendment No. 331, offered by the Senator from Kansas, to committee amendment beginning on page 1, line 3.

The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, if I may speak for a few moments. I spoke last night, when I offered my amendment, about what I regarded as an exceptionally important issue. I would like to go through some of those same arguments again for those who might not have been in their offices or on the floor last night.

I offered an amendment that would prevent the President's Executive order on striker replacements from taking effect. I offered the amendment because I am deeply troubled by the precedents that will be set by this Executive order.

This is not a debate about whether there should or should not be the opportunity to replace striking workers with permanent replacement workers.

As we debate this amendment, Mr. President, we will hear a great deal on both sides about the use of permanent replacements. In my view, a ban on permanent replacements will upset the fundamental balance in management-labor relations that has existed now for 60 years. We have debated this issue for three Congresses now, and I know there are strongly held views on both sides.

That is not the only issue that is at stake here. The central issue before Members this morning is whether our national labor policy should be determined by executive fiat rather than by an act of Congress. I think this is an enormously important question, Mr. President, because it really does set a precedent that we should consider carefully.

By limiting the rights of Federal contractors to hire permanent replacements, the President has, in effect, overturned 60 years of Federal labor law with the stroke of a pen. I am not a constitutional scholar. But I do know that it is the President's role to enforce the laws, not to make them. By issuing this Executive order, the President has, in my view, overstepped his bounds.

For the first time, to my knowledge, the President has issued an Executive order that contravenes current law. The order will effectively prohibit one group, Federal contractors, from taking action that every other company is legally permitted to do under current law.

Regardless of what one thinks about the merits of the striker replacement issue, we should all be concerned about the precedent that this order will set. For example, what if a President decided to debar Federal contractors whose workers decided to go on strike?

Mr. President, the right to strike is legal, just as the right to hire permanent replacement workers for striking workers is legal. So it could eventually affect both sides of the coin if indeed we are going to start down this slippery slope.

Supporters of the President's action should think twice about the precedent this will set for future administrations that wish to alter labor law through the Federal procurement process. We will hear in the course of this debate that this Executive order is nothing new, that such orders were issued by previous administrations. The fact is that none of those Executive orders ran contrary to established labor law.

For example, President Bush issued an Executive order to enforce the Supreme Court's Beck decision. That order merely required employers to post a notice to employees informing them of the law. Its purpose was to enforce the law as set by Congress and interpreted by the courts.

No one's rights were infringed. No congressional policy was violated. No new rights were established. No existing rights were taken away. By contrast, this new Executive order overturns a legal right that has existed for 60 years and undermines the existing framework of our Federal labor law which Congress, for decades, has declined to change.

Mr. President, we all have sympathy for the situations occurring in plants today where there have been long ongoing strikes. We have sympathy for the hardships striking workers face. But I am a strong supporter of the collective bargaining process. If indeed we tie one hand behind our back, whether it is for strikers or for employers, we have harmed the collective bargaining process.

I urge my colleagues to look at the fine print of this Executive order. It sets out a new and unprecedented enforcement and regulatory scheme, all without the slightest input of Congress. The Executive order gives the Secretary of Labor the power to determine violations of the order, a power which Congress in similar circumstances has delegated to the National Labor Relations Board.

In addition, the Executive order gives the Secretary of Labor authority to write new regulations on who will be subject to the order. Not only does the Executive order circumvent Congress by making a new law, it also creates more new regulations.

According to the Washington Post today, at least part of the administration's motivation for issuing the Executive order stems from recent strikes such as Bridgestone/Firestone Co. We can all appreciate the emotions and upheavals that occur in any labor dispute. They are troubling to each and every one of us whether it occurs in our State or not. Just weeks ago the Senate overwhelmingly rejected a sense-of-the-Senate resolution urging intervention in the Bridgestone dispute.

Here again, the administration has chosen to go around Congress by this Executive order. Many on both sides feel quite strongly about the issue of striker replacements. I believe existing law provides an appropriate balance between the interests of management and labor. But we will also hear from those who oppose this amendment because they believe that using striker replacements is inherently unfair.

That issue will be debated, I am sure, at another time. We have done so in the past. Mr. President, that misses the point. Regardless of what we believe about striker replacements, it is up to Congress and not the President to set our national labor policy through legislation. We should not relinquish that authority by permitting this Executive order to stand.

Mr. CHAFEE. Mr. President, I strongly support the amendment being offered by the Labor and Human Resources Committee Chairwoman, Senator KASSEBAUM, which would prohibit funding for the implementation of the President's Executive order which was signed yesterday.

What does that Executive order do? It bars Federal contractors from hiring permanent replacement workers during an economic strike. A similar prohibition has already been included in the FEMA supplemental appropriation bill which is pending in the House.

In the event of a finding that permanent replacement workers are used in any Federal contract exceeding $100,000, which is about 90 percent of the dollar value of all Federal contracts—in other words, this in effect covers all Federal contracts—the Executive order authorizes the Secretary of Labor to instruct affected agencies to terminate such contracts, if convenient.

While the Secretary may not compel agency compliance, he may then proceed to debar the contractor from receiving or performing any Federal contracts until the offending labor dispute is settled.

Now, Mr. President, I think it is regrettable that the President has chosen

to circumvent the will of Congress on this issue. That is what is happening here. Legislation to prohibit businesses from hiring permanent replacement workers was the subject of a bipartisan filibuster in 1992 and again in 1994. This matter has come before this body twice in the last 3 years.

Senators feel very strongly that overturning this Supreme Court decision of Mackay Radio, 1938—which was some 55 years ago—either overturning that by legislation or by Executive order, many Senators believe would undermine the very foundation of modern labor relations policy. Namely, the collective bargaining process. In Mackay Radio the Supreme Court held that employers had the right to maintain business operations with the replacement workers in the event of an economic strike. That is what the Court said. Just as affected employees have the right to strike for better wages or benefits.

The change proposed would eliminate, in our judgment, any incentive for good-faith negotiation and bargaining and create an unlevel playing field to the detriment of the employers.

Now, the bottom line, Mr. President, is that the President's Executive order would force Federal contractors hit with a strike to accept union economic demands or face the prospect of a prolonged shutdown that could prove fatal to these companies. Alternatively, such businesses could elect to abandon the Federal contractual marketplace altogether.

One, that is an unlikely option for some of our large contractors; two, it is bad for our country. We do not want to eliminate prospective bidders. We want to have more bidders, and hopefully that would be achieved. That is what we seek. Certainly not possible under this legislation.

Now, Senators also feel strongly that this is a question of labor-management policy. This is not a procurement issue. The President somehow in order to achieve his goal put this in the terms of procurement issue. It is a labor-management policy, a labor-management situation.

The Congress, not the executive branch, must initiate any changes in our labor laws—that is where this matter belongs, in the Congress of the United States—and a change of the kind the President has proposed is clearly ill-advised and unwarranted. For this reason, I am certain that the President's decision to go forward with this Executive order will be challenged in the Federal courts.

H.R. 889, which is the legislation before us—not the amendment, but the basic bill we are debating today—provides urgently needed funding to the Department of Defense to shore up sagging readiness and to reimburse for services for unexpected contingencies in Haiti, in the Persian Gulf, and other hot spots of the world. It would be unfortunate, I believe, to delay this funding over the striker replacement issue, but the President's decision has left the Senate no alternative but to rehash this issue again and to prohibit its implementation, if possible.

The President's Executive order, in our judgment, for those of us who oppose the ban on striker replacements, is a job-killing one which, if left to stand, would harm our economy, would increase labor strife, would reduce productivity, and weaken the competitiveness of U.S. industry. Thus, I will vote for the Kassebaum amendment to prohibit its implementation, and I urge my colleagues to support the Senator from Kansas likewise. I thank the Chair.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I rise in opposition to the amendment of the Senator from Kansas. We will have an opportunity to debate the amendment, but I was interested in listening to the Senator from Kansas talk about the procedure which is being followed by the President and how this was, in effect, overriding existing law. I think that the examples that were touched on briefly, last night regarding the issuance of Executive orders or other examples that have been mentioned that were utilized by President Bush, for example, were of a different nature.

I take issue because prehiring agreements are basically legal and the Executive order by President Bush effectively excluded prehiring agreements, any prehiring agreement under Federal contract. It was thus in complete conflict with the existing law. We know that, because the definitive case at issue involving a prehiring agreement involved all of the work being done on Boston Harbor. That agreement was entered into and was subsequently upheld by the Supreme Court. It is, at the present time, working, and working extremely effectively, I might add. I will not take the time of the Senate right now to go into how effective that particular agreement has been in terms of the saving of resources and taxpayers' funds. But an effort to prevent prehire agreements certainly was an action that was taken by the previous administration, and I did not hear the chorus rise up at the time and talk about exceeding the authority and responsibility of the executive branch in moving ahead to address that issue. To the contrary, there was broad support for the President's action in that area.

But I would like to just take a few moments to put this amendment in some perspective. I think all of us understand the urgency and the importance of the underlying legislation and the importance of having it concluded at an early time. This legislation is important to our national security and national defense, a matter which has been raised by the Senator from Kansas. The Senator raises an important public policy matter with her amendment. I would have thought we would have addressed it in some other forum, although we will certainly welcome the opportunity to debate this because it is an extremely important issue affecting workers' rights. It is more of an effort, I feel—I do not want to draw conclusions in terms of the motivations of it—a real attempt to embarrass the President of the United States who has issued this proclamation on behalf of working families.

I think if we look over the period of just recent times, both on the floor of the U.S. Senate and also in our committee systems and also actions in the House, we find out, if we have a chance to go into it, that this is just one more step that is being taken by the majority in the House and Senate to undermine the very legitimate interests and rights of working families in this country. But I will have a chance to address that issue in just a few moments.

But let me bring focus to the particular matter which is before us in the form of the Senator's amendment. Our Republican colleagues have asserted that we need to act because the President has exceeded his authority by acting on a labor relations issue without specific congressional authority and that Congress has already rejected the President's action through last year's vote on S. 55, the Workplace Fairness Act.

In fact, a majority, Mr. President, in both Houses of Congress, supported making it unlawful for any employer to use permanent replacements. The ban was not enacted because a minority of the Senate was able to prevent the consideration of S. 55, but Congress never rejected the lesser step of prohibiting the use of permanent replacements by Federal contractors. We never addressed that issue. There was majority support to address this issue in the House of Representatives. It was bipartisan. There was majority support to readdress the whole striker replacement issue in the Senate, but a small minority was able to defeat that action and defeat that policy question. No action was taken on the particular authority of the President to take the action which he did yesterday.

President Clinton's action, in issuing this order, is simply an exercise of his well-recognized authority over procurement and contracting by the executive branch authorities, an authority that was exercised both by President Reagan and President Bush, with no objections from those who are now expressing such dismay.

In 1992, President Bush issued two Executive orders dealing with Federal contractor labor relations which are clear precedents for President Clinton's action, which many of my colleagues

on the other side of the aisle applauded rather than condemned.

The first of those two Executive orders required all unionized Federal contractors to post a notice in their workplace informing all employees that they could not be required to join a union and that they had a right to refuse to pay dues for any purpose unrelated to collective bargaining.

Those requirements are not requirements of the National Labor Relations Act, and not only were they never enacted by Congress, but proposed legislation to establish such rules had so little support that it was never even reported from the committee. Indeed, when President Bush issued that Executive order, his press secretary pointed to Congress' failure to act on the legislation as the President's reason for acting.

That is in dramatic contrast to the current situation on the whole question of permanent replacement where a majority of the Members of the House and even a majority of the Members of the Senate were prepared to act, wanted to act, and that action was foreclosed by a small group of Members in the Senate. In contrast to this situation, they could not even get the support for that particular proposal to get the measure out of committee.

So was there objection at that time either from the Senator from Kansas or others? Were there any protests from my Republican colleagues? There were not. It is clear that the objections that are now being raised to President Clinton's action are not based on principle or a consistent view of the President's authority with respect to labor relations in Federal procurement.

The second of the two Bush Executive orders on Federal contractor labor relations issued in October 1992 dealt with prehiring agreements, collective bargaining agreements that establish labor standards for construction work prior to the hiring of workers.

Prehire agreements are common in the construction industry and lawful under the National Labor Relations Act, yet President Bush, without any specific authorization by Congress, prohibited Federal contractors from entering into such agreements for work on Federal projects.

Did my Republican colleague object to the fact that President Bush was prohibiting a labor relations practice that Congress had chosen to permit? She did not, and neither did any of the other Republican Senators.

What is this really all about? The truth is that this debate is a continuation of our debates in the past two Congresses on the Workplace Fairness Act. Only now the shoe is on the other foot and it is clearly pinching our Republican friends. They forced us to get 60 votes to pass the act, which we were unable to do.

The basic principle behind the President's action has strong public support. In the latest poll from Fingerhut Associates, 64 percent of respondents said that once a majority of workers have voted to strike, companies should not be allowed to hire permanent replacements to take their jobs. The American people understand that this is a question of simple justice for workers.

That is what the issue is about, simple justice for workers.

It is unlawful for any employer to fire a worker for exercising the right to strike, and it should be equally unlawful for an employer to be able to deprive a striking worker of his job by permanently replacing that worker. It is as simple as that.

Repeatedly, when we are debating economic legislation and U.S. competitiveness in the world economy, Senators from both sides of the aisle praise the high productivity of American workers, their excellent skills, and their pride in their work. Yet much of the legislation we pass ignores the importance of treating American workers fairly. The Executive order is for the American worker. It will restore the balance of power intended between management and labor under the National Labor Relations Act.

Basically, the striker replacement legislation was to restore the balance which had existed for years and contributed so mightily in terms of our whole economic progress and our industrial strength. That balance has been shifted and changed in recent times with the strike replacement activities of a number of employers, and that has diminished the economic standing of American workers who continue to be the backbone of the American economy.

That farsighted act, the National Labor Relations Act, signed into law by President Roosevelt in 1935 as the cornerstone of the New Deal, recognized the inherent inequality between the ineffective bargaining power of a lone worker seeking to improve wages and working conditions and the overwhelming bargaining power of the employer.

As part of comprehensive legislation enacting the fundamental goals of national labor policy, the 1935 act guaranteed the rights of workers to form and join labor organizations and engage in collective bargaining with their employers. The act gave workers strength in numbers. It gave them countervailing power, capable of matching the power of the employers.

As the Supreme Court said in 1935 in a landmark decision upholding the constitutionality of the National Labor Relations Act, long ago we stated the reason for labor organizations. We said they were organized out of the necessities of the situation, that a single employee was helpless in dealing with an employer, and that he was dependent ordinarily on his daily wage for the maintenance of himself and his family; that if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employer's employ and resist arbitrary and unfair treatment; that the union was essential to give laborers an opportunity to deal on an equal basis with the employer.

Today, as much as ever, the employees need the right to organize to improve their wages, working conditions, and enter into a dialog with their employers about how work should be arranged so that the firm can achieve its productivity, its profitability goals, while at the same time ensuring fair treatment for workers. But the right to organize and bargain collectively is only a hollow promise if management is allowed to use the tactic of permanently replacing the workers that go on strike.

No one likes strikes, least of all the strikers who lose their wages during any strike and risk the loss of health coverage and other benefits. Because both workers and employers have a mutual interest in avoiding economic losses, the overwhelming majority of collective bargaining disputes are settled without a strike, but the right to strike helps to ensure that a fair economic bargain is reached between employers and workers.

The labor laws give workers the right to join together to combine their strength, and the union movement has been responsible for many of the gains that workers have achieved in the past half century. The process of collective bargaining works. It prevents workers from being exploited and has created a productive balance of power between management and labor. And the cornerstone of collective bargaining is the right to strike. That right is nullified by the practice of permanently replacing workers who go on strike. The entire process of collective bargaining is undermined.

That is basically what is at issue here, as I described. That is the basic and fundamental matter of principle that is before the Senate today. It is as old as the debate in terms of our whole industrial development and strength as a country, and it is basic and fundamental to the issues of economic justice and social progress in our country. That is why it is such a principal issue that has to be addressed today and why it will need discussion and debate.

Both the National Labor Relations Act and the Railway Labor Act explicitly prohibited employers from firing employees who exercised their right to strike. As a result of a loophole created by the Supreme Court half a century ago but seldom used until recent years, the practice of permanently replacing striker workers allows employers to achieve the same result. The ability to hire permanent replacements tilts the balance unfairly in favor of business in labor-management relations, and it is

no surprise that business is lobbying hard to block this Executive order.

Hiring permanent replacements encourages intransigence by management in negotiating with labor. It encourages employers to replace current workers with new workers willing to settle for less and to accept smaller pay checks and other benefits. The Executive order will help restore the balance that has been distorted in recent years. It will reaffirm the original promise of the statutes and give workers the right to bargain collectively and participate in peaceful activity in furtherance of their goals without fear of being fired.

The Supreme Court's decision in the Mackay Radio case in 1938 is a source of the current problem, even though the issue is not squarely raised in the case itself. In Mackay, the Court ruled it was unlawful for an employer to refuse to reinstate striking union leaders when the employer had reinstated other striking union members. The Court refused to allow the employer to discriminate between strike leaders and other strikers. It ordered the employer to put the permanently replaced striking union leaders back to work. In fact, the Supreme Court did not even have before it the issue of the legality of permanently replacing striking workers, but language in the decision condoning the employer's hiring of permanent replacements has been interpreted as permitting the practice as long as the employer does not use it in a discriminatory way.

This aspect of the Mackay decision had no significant impact on labor relations for nearly half a century. Few employers resorted to permanent replacements or even threatened to use that tactic. Employers and workers had a mutual understanding that strikes are only temporary disruptions in an ongoing satisfactory relationship. Businesses responded to strikes in various ways, by having supervisors perform the work, by hiring temporary replacements, and by shutting down operations. Employers acted on the belief that their work force was valuable and not easily replaced and that once the temporary labor dispute was over, the two sides would resume the collective bargaining relationship that brought the benefits and stability to each.

In fact, a survey by the Wharton Business School in 1982 revealed that most employers found no need to hire any replacements during a strike. Many believed that hiring even temporary replacements was undesirable because it would make the settlement of the strike and resumption of stable labor relations more difficult after the dispute, and under those circumstances there was no need to seek a change in the law.

But in the 1970's and 1980's, this de facto pattern began to change, and most observers feel that the strongest signal for change came in 1981 when President Reagan summarily dismissed the PATCO, air traffic controllers who went on strike and permanent replacements were hired by the FAA.

The increased use of permanent replacements in recent years has been confirmed by a survey of the NLRB decisions and other reported cases. During the four decades from 1935 to 1973, the survey found an average of 6 strikes a year in which permanent replacements were used, but the number quadrupled to an average of 23 strikes per year for the period 1974 through 1991.

Mr. President, I have other remarks but I see my friend from Illinois and also Wisconsin on the floor. I know other colleagues are here, so I will yield in just a few moments and then come back and continue my discussion of this issue.

Mr. President, I am somewhat troubled by the whole pattern that has been developed in the period of these last several weeks and what it means for working families in this country. I cannot help but conclude that the actions that we have before us in the proposal of my good friend, the Senator from Kansas, is not unrelated to a whole stream of activities and statements and comments that have been made about the condition of working families in this Nation that are really the backbone of our country.

I can think of the recent discussion and debate that we had on an issue which is as basic and fundamental as the increase in the minimum wage. The origins of this minimum wage go back in time to a similar period that we had discussed, with the development of the National Labor Relations Act, where it was generally understood in the United States of America that if an individual member of the family was prepared to work 40 hours a week, 52 weeks of the year, that member was going to have a sufficient income so they would not be in poverty, so their children would not be in poverty, so that their wife would not be in poverty or their husband would not be in poverty—that they would not be in poverty. They would effectively be able to own their own home—hopefully be able to pay a mortgage—provide for their children, live with some sense of dignity and some sense of a future.

That was a part of the whole social compact that was basically supported by Republicans and Democrats alike for a considerable period of time. It really lost its thrust in the period of the 1980's, when an increase in the minimum wage was vetoed. Eventually a compromise was reached. We had an incremental addition of a 45-cent and a 45-cent increase in the minimum wage, and we saw that increase go into effect. And all of the various suggestions and recommendations that had been made about the loss of jobs failed to develop. What happened was that hard-working Americans—overwhelmingly women in our society; close to 75 percent of the people who earn the minimum wage are women in our society—they were able, not really to make it but to at least continue to work and to try to provide for their children. Make no mistake, the issue of minimum wage is an issue for children in our society as well as for those individuals who are working to make the minimum wage.

So a number of us introduced legislation to just raise the minimum wage—we thought 50 cents, 50 cents, 50 cents—over the period of the next 3 years to try to regain the concept that for a working family, work was going to pay, and that people who were prepared to work would be able to make sufficient income to provide for their families. Then we cut that back to 45 cents and 45 cents. These are effectively the same amounts that were accepted previously and supported by a President and supported in this body overwhelmingly, by Republicans and Democrats, and signed into law by a Republican President. We thought if we had that ability with a Republican President and a Democratic House and a Democratic Senate, that at least we would be able to do the same with a Republican House, a Republican Senate, and a Democratic President. We thought with a signing into law of 45 cents and 45 cents we would get back effectively to where we were in terms of purchasing power, to the purchasing power that would be available to families that had received the minimum wage a number of years ago, in the late 1980's—1989, 1990—under a law signed by President Bush.

We had the Republican leadership condemn this measure, saying they were unalterably opposed to the increase. Some even expressed opposition to any minimum wage. And we have been trying to see how we might be able to make that a part of the real Contract With America—the real Contract With America: Rewarding work. Rewarding work.

We do not need a great deal of hearings on that measure. I know I attended one, of the Joint Economic Committee, between the House and Senate. It was very interesting. The overwhelming number of independent studies, of 11 independent studies that reviewed the history of the minimum wage increase, showed no effective loss of jobs. All we have to do is look historically at the seven increases in the minimum wage since the time it had been actually implemented, and we find the same result. Nonetheless we have the harshness and the criticism of any increase, in terms of the minimum wage. So we have that out there on the deck for the working families.

If you had a little scorecard you could say, all right, now let us also try and repeal what the President did for

working families on this Executive order: opposition to that. You could write underneath it: opposition to the increase in the minimum wage.

Then we come back to hearings in our Labor and Human Resources Committee about the repeal of the Davis-Bacon Program. All the Davis-Bacon Program says is we are going to have a prevailing wage in various Federal contracting so the Government will have a neutral role, in terms of wages, in terms of performance of various work.

We have the assault on the Davis-Bacon Program. Who is affected by the Davis-Bacon Program? The worker's average income is $26,000 a year. What have we done to workers that are making $26,000 a year, in some of the most dangerous work in America? Outside of mining, construction is one of the two or three most dangerous employments in our country. Mr. President, $26,000 a year, and we are declaring war on those families.

No, we are not going to give working families a minimum wage increase. No, we are not even going to give the protections for a family earning $26,000 a year that wants to work in construction and build America—no, that is too much for those individuals.

So we say OK, we are not going to permit the President to protect workers on Federal contracts that are being threatened with permanent strike replacements, which have been part of our industrial tradition. We are against the minimum wage. Now we are against those workers.

Not only are we against those workers but we have a new gimmick. We are having what we call 8(a)(2) of the National Labor Relations Act, to try to promote company unions. We are not satisfied that the working relationship between employers and employees is a balance. We want something different. Sure, we had that matter discussed by distinguished and thoughtful men and women on the Dunlop Commission, but they did not recommend a unilateral action in terms of section 8(a)(2). They did not recommend that particular measure. They understood what was at risk on this measure. We have those who are trying to undermine even the heart and the soul of the concept of workers being able to come together to at least exercise their rights for economic gain. That is out there. So we have that on the table as well.

Mr. President, all we have to do is look at what has happened to workers' interests over the period of the last 12 or the last 15 years. On the one hand you see the extraordinary rise in profits—and we are all thankful that we have American companies and corporations that are being successful and being able to compete internationally and are experiencing some of the greatest profits in the history of this country. But it is virtually flat in terms of real wages and take-home pay for working families. It is virtually flat, if not diminished, in terms of the entry-level jobs and jobs at the bottom, effectively, 65 or 70 percent of workers who are out there. It is effectively flat or being reduced.

Every day their financial interests are being assaulted out there. Instead of being out here on the floor of the U.S. Senate saying: Look, they are the men and women who are the backbone of this country, what can we do to try to make sure that they are going to be able to live in some peace and dignity and respect? We cannot even wait a few hours in order to tag an amendment on something which is vital to our national security and begin the debate to diminish them. That is what this debate is all about: Do not let them get ahead a little bit, in spite of the fact that under the previous administration, under the Bush administration, they issued Executive orders and those that are supporting this particular proposal were then silent—for example with regard to the prehearing agreement.

The prehiring agreement was legal. He made it illegal. I do not want to hear talk about going beyond or exceeding the authority of the power of the President. I mean, give us a break, Mr. President, in terms of this measure. We know what it is about. I think the American people ought to understand it.

What is it about working families? Not only their interest, but what is it about their children? They are trying to raise the cost of their children going to college, raise the cost of the interest on those loans while those kids are going on to the universities and colleges across this country, raise that $20 billion over a period of 10 years, raise that $20 billion so that every son and daughter of that working family that is hardly able to put it together is going to pay even more. No; do not try to find ways to try to make it easier for the sons and daughters to continue on and get a higher education understanding that what you learn is related to what you earn. Make it more difficult.

This has been established as a matter of discussion and debate at the various Budget Committees and in the House Appropriations Committee. Make it more difficult. That is not bad enough. For their younger brothers and sisters who are going to school, they take their school lunch away from them. What is it about, Mr. President? What is it about this whole concept, whether it is the Contract With America or whatever it is, that is declaring war on working families? War on the children in terms of the kids and whether they are getting fed, or whether that kid may need a summer job. Eliminate all the summer jobs.

They eliminated 13,000 summer jobs in my State of Massachusetts. Those summer jobs came in the wake of the Los Angeles riots. I think we should learn a lesson. We wanted to try to get young people at the time when they are not involved in school to try to get them starting to do something gainful such as employment. They eliminate those summer jobs.

So they take away something that those younger brothers and sisters can eat and take away the employment in time of summer. Take that away. Cut back on the education programs. Say to the mayors of the various cities that are trying to do something in various areas of working families with their community development block grant programs, we are going to cut that as well. We are going to make it more difficult for you to try to make life somewhat better in terms of the inner cities.

Sure, Mr. President, we have to get our handle on the costs of escalating Government expenditures. But my good friend from Nevada, Senator REID, said it more wisely than I have heard here on the floor of U.S. Senate for some period of time. That is, you are never going to do it until you reform the health care system. You are never going to do it until you reform the health care system. Health care costs are going up at 10 or 11 percent, double the rate of inflation. It does not make sense just to put a cap on those Medicare and Medicaid costs because all you will do is transfer it to the private sector with all its inefficiency and back to those communities in all those cities that have those emergency rooms in inner cities. It is going to cause even more distress and poor outcomes in terms of health results as well as the cost of it. This is the serious matter of trying to do it.

So, Mr. President, I see my colleagues here on the floor. I hope that we will have a chance to focus on precisely this amendment. I think it underlines some basic kinds of protections which are not going to solve all of the problems that we are facing in terms of working families. But it seems to me at some time we just have to say we have had enough. We have had enough in terms of the continued assault on working families in this country. It is only the beginning of March.

We have only just touched very briefly on some of the measures that are going to affect the children. Cut back on the day care programs; day care programs for working families. Only about 5 or 6 percent of the needs are being met today, and we get a recommendation to cut back on those programs as well. So you are a mother. You want to go out and work. You are not going to be able to get any day care for your kids, as inadequate as it is today.

What is this common sense? What is it about the families that have children in our society that are the subject and

the target of this kind of an attitude? It makes no sense.

This measure that we have now before us is related to that whole concept. It is unwise in terms of policy. It is unwise in terms of the interests of the workers that it is going to protect.

I will have more to say about it later in the debate.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mrs. KASSEBAUM). The Senator from Illinois.

Mr. SIMON. Madam President, I rise in opposition to this amendment. I think it is not in the national interest.

I simply remind my colleague from Kansas, who is the chief sponsor of the amendment, and all of my colleagues that consistency is not necessarily the virtue of any of us in this body. But I remind my colleague from Kansas, who is now the Presiding Officer, that on January 6 of this year, 2 months and 3 days ago I introduced a resolution, a sense of the Senate—nothing nearly as sweeping as the Kassebaum amendment—which simply said to the Bridgestone/Firestone Co., a wholly owned Japanese subsidiary with 4,200 workers, they ought to get together and have talks and not have the permanent replacement.

At that point, the distinguished Senator from Kansas, who is my friend, with whom I enjoy working on African issues and many other things, said:

> I know the Senator from Illinois is well-intentioned. But this is neither the time nor the place for Congress to be considering anything other than this very important bill which is before us. The amendment offered by the Senator from Illinois is completely extraneous from the matter at hand, and for that reason alone I believe the Senate should table his amendment.

If I may use the words of the Senator from Kansas, and just modify them slightly, I would say the amendment offered by the Senator from Kansas "is completely extraneous from the matter at hand, and for that reason alone I believe the Senate should table her amendment."

Her words were heeded by this body, and by a narrow margin that amendment was defeated. I hope this amendment will be defeated. It is part of what Senator KENNEDY was just talking about.

We have a very fundamental philosophical decision to make in Government—whether Government is going to help the wealthy and powerful, or whether it is going to help those who really struggle. My strong belief is the wealthy and powerful do a pretty good job of taking care of themselves, particularly with the system of campaign financing that we have in this country. And what we ought to be doing is trying to help people who struggle. This amendment goes in the opposite direction.

I point out that in the United States today only 16 percent of our work force is organized by labor unions. No other Western industrialized democracy has anywhere near that low a figure. If you exclude the governmental unions, that number drops down to 11.8 percent.

Not too long ago, George Shultz, the distinguished former Secretary of State and Secretary of Labor, made a speech that was quoted in the New York Times in which he said things are out of balance in our country, that the fact that labor union membership is so low, so small in our country, is not a healthy thing for the United States of America.

I agree with him completely. I think we need greater balance. That is the word that ought to be part of our dialog here.

The reality is that we had pretty good balance in labor-management relations over the years, since the early 1930's. When a Democrat came in, the National Labor Relations Board shifted a little bit on the side of labor, and when the Republicans came in, it would shift a little more on the side of management; but it was a pretty good balance. Then Ronald Reagan became President, and all of a sudden it got way out of balance. That has done real harm to labor-management relations in our country.

The minimum wage that Senator KENNEDY talked about is one part of providing a little balance. Real candidly, I think the minimum wage would do more in terms of welfare reform than any of the bills that I see before us that are labeled "welfare reform" right now.

But in terms of permanent striker replacement, I mentioned Bridgestone/Firestone, a Japanese-owned corporation. Permanent striker replacement is illegal in Japan; it is illegal in Italy, it is illegal in Germany; it is illegal in France; it is illegal in Denmark; it is illegal in Norway; it is illegal in Sweden. I do not know what countries I have skipped now, but the only countries outside of the United States of America where it is legal—the only democracies where it is legal to fire permanent strikers are Great Britain, Hong Kong, and Singapore. In every other Western industrialized democracy, that kind of action is illegal. Traditionally, we just have not done that in our country. I do not think we ought to be moving down that line. I think the President's action provides a little balance that is needed.

Let me add, Madam President, if this amendment is adopted, I am going to have a series of amendments on labor law reform. For example, if you have a pattern and practice of violating the civil rights laws of this country, you cannot get a Federal contract. I think it ought to be the law in this country that if you had a pattern and practice of violating labor laws, you should not be able to get a Federal contract. I think if you have a pattern and practice of violating worker safety laws, you should not be able to get a Federal contract.

When you organize—in Canada, for example, if you want to organize a plant or site, you have 30 days in which a majority of people can—the 30 days comes after you get the majority of people. You get a majority of people to sign cards and pay $1, and 30 days after that, that plant or site is organized. In the United States, it can draw out for 7 years before a plant is organized, and in the meantime, an employer, for all practical purposes, has the legal right to fire people for their union activity.

There are a whole series of things that can be done. If this amendment is adopted, we are going to have other amendments in this area. But I would get back to the fundamental point that my colleague from Kansas made to me when I proposed an amendment, which was just a sense of the Senate and had no permanent implication, as this one does, when she says, "The amendment offered by the Senator from Illinois is completely extraneous from the matter at hand, and for that reason alone, I believe the Senate should table his amendment."

The Senate listened to her then. I hope they will listen to her words now and table the amendment of the Senator from Kansas.

Madam President, I yield the floor.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Madam President, I did not expect to spend much time on the floor today discussing the subject of permanent striker replacement. As we have seen, we have had eloquent speeches by Members of the minority who have set forth an issue for us which was led to by action of the President just recently and the amendment by the Senator from Kansas.

I rise in favor of that amendment. Like many of my colleagues, I thought we had put this issue to bed last year when both the House and Senate considered S. 55 and it was rejected, or never even left the desk in the Senate.

President Clinton made his support of this type of legislation clear during the 1992 election campaign, and he and Secretary of Labor Reich have reaffirmed their commitment to a striker replacement bill on numerous occasions since. Clearly, the President would have signed a congressional bill if it had been laid on his desk. However, as we know, S. 55 never left the Senate desk.

The President certainly is free to attempt another legislative push for a bill like S. 55. I would not welcome the attempt, but it would be well within the normal flow of our governmental process for him to do so.

However, it is abnormal, unusual, and unprecedented for President Clinton to address this issue through the Executive order he issued yesterday.

The legal arguments against the President's action are many and compelling. Congress has spoken consistently on this subject in the context of the National Labor Relations Act for over half a century.

In 1938, the Supreme Court handed down the Mackay Radio decision authorizing permanent replacement of economic strikers. Since then Congress has considered amendments to the act several times, but it has never approved overturning Mackay.

So it is important to remember this, because as we go forward and talk about Executive orders and the power of Executive orders, it must be remembered that this present law is consistent with a U.S. Supreme Court decision.

An Executive order that directly contravenes the express will of Congress calls into question significant separation of powers issues under the Constitution. For the past several weeks, we have heard very powerful arguments on the importance of this separation of powers in the context of the balanced budget amendment, and I expect we will hear more when we soon turn to consideration of the line-item veto.

These arguments, while perhaps valid, are speculative. In the case of the Executive order in question, the challenge is clear and present. An Executive, frustrated by legislative inaction, is seeking to accomplish by Executive order what has been explicitly denied him by the legislatures and which is inconsistent with the U.S. Supreme Court decision. I hope those of my colleagues who have been concerned about the issue of the separation of powers will see fit to support the Kassebaum amendment, regardless of their views on the merits of the legislation banning permanent replacements.

This is not to say that the President cannot use Executive authority to attach conditions to parties entering into contracts with the Federal Government. But that power has generally been used to force or encourage contractors to do something that is consistent with existing law or policy.

By contrast, the present order would deny contractors the right to take action which is authorized under the National Labor Relations Act, which has been upheld by the National Labor Relations Board and the Supreme Court, and which Congress has repeatedly refused to outlaw. Thus, the President's order swims upstream against the current of existing law and policy. In doing so, it is unprecedented and unsupportable.

Legal arguments aside, perhaps the most compelling evidence on the weakness of this policy comes from the administration itself. We witnessed, or more accurately did not witness, a stealth signing ceremony, where partisans were invited but the press was excluded.

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In fact, the defense of the policy from the White House gives "weak" a bad name. Ostensibly, the policy is designed to ensure the quality of products the Government procures. This is an extraordinary position for at least two reasons.

First, it exhibits a total lack of faith in the Government procurement process. Apparently, all the administration's efforts to retool the procurement process have produced and Edsel, as it apparently will be unable to distinguish and reject faulty products in the absence of this Executive order. This is a very sad commentary on GSA, the Department of Defense, and every contracting agency.

But even if we could believe this sad state of affairs, it belies a fundamental misunderstanding of the dynamics of a strike. The alternative to permanent replacement workers is not a happy stable of industrious elves, but shutdowns, shorthanded shifts staffed by managers and supervisory staff, of temporary replacements. It is hard to see how these alternatives will result in the production of appreciably higher quality goods or services.

Back in the real world, the failure to meet standards would free the Government to contract with other providers. Future Federal contracts might be jeopardized as a result of failure to live up to contract terms. Thus, it would be a self-defeating act of the highest order for a contractor to put itself in this position.

If the administration were really worried about the impact of strikes and permanent replacement workers on the procurement process, then it would condition the receipt of Federal contracts on the assurance that performance of the contract would not be interrupted by a strike. That step, and that step alone, would ensure that a trained and stable work force would do the work throughout the contract.

Doing so, of course, would be a bad idea, because it would diminish the rights of one party to a collective bargaining agreement, it would reduce the pool of potential bidders and would likely increase costs to the Federal Government. But this description applies equally well to the administration's policy.

Madam President, I think it is clear that the President's purpose is not to aid the cause of public procurement, but that of partisan politics. It is a bad idea whose time will never come.

His action is a clear affront to the separation of powers, is of questionable legality, and will ill serve labor management relations and the taxpayers. Given all these considerations, I strongly support the amendment offered by the chairman of the Labor and Human Resources Committee, the Senator from Kansas, Senator KASSEBAUM, and hope that the vast majority of my colleagues on both sides of the aisle will agree that this step, putting aside all of the partisan politics, is just ill-advised from the perception of the separation of powers and for good policy.

It seems that no traditional labor law issue so galvanizes the actions of the interested parties as does the legislative debate on striker replacements. While all can agree that this issue cuts to the very heart of the collective bargaining relationship, there is wide disagreement on whether a ban of replacements would help or hurt the institution of collective bargaining.

At the outset, Madam President, we need to agree on whether there is a problem requiring a solution before passing that solution into law or mandating it by Executive order. My difficulty with the President's order is that I am not convinced there is a problem with the hiring of permanent striker replacements that requires any solution, much less the absolute ban advocated by this Executive order. Moreover, even the data produced in support of similar legislation over the past several years are at best inconclusive on whether use of permanent replacements is a growing trend in the business community or that it is any more prevalent now than it was in the past.

Madam President, the impetus for this Executive order is, to a large extent, driven by the celebrated cases where permanent replacements were used. Thus we have heard over the years about Eastern Airlines, Greyhound, the New York Daily News, and now Bridgestone-Firestone to name just a few. However, these and other examples of the use of permanent replacements do not suggest models of successful corporate strategies. To the contrary, many of these companies have suffered grinding reversals of their business fortunes, up to and including total business collapse, following the use of replacements. I do not believe that many companies will want to adopt a pattern of behavior which leads to such results. And again, of course, the statistics do not show that many have chosen to do so.

The Clinton administration has set in motion the process of taking a hard look at our system of labor laws. Toward that end, a blue ribbon Dunlop Commission was established with the mission of studying workplace cooperation and recommending ways of reforming worker-management relations to "create an environment within which American business can prosper." That Commission has now issued its report and recommendations. It is significant to note that the Commission did not recommend the radical change in the law on replacements that the President's Executive order mandates.

From the beginning of the debate on this issue, I have suggested that we

need to open up a broad-based discussion on the way in which labor relations disputes are resolved. I am a supporter of the American system of collective bargaining and I believe, for the most part, that it does a good job. However, the simple truth is that system works better for everyone in times of economic expansion than it does in connection with the setbacks and retrenchment found during a recession. This elementary fact probably has as more to do with any increase that may have occurred in replacement situations than does some fanciful conclusion about changes in employer attitudes brought on by President Reagan's handling of the air traffic controllers strike.

I for one would be willing to explore the options which exist in the area of alternative dispute resolution. We do have some history on this issue. There are segments of the American work force where the right to bargain collectively does not include the right to strike. The majority of these are within the public sector. In those instances, various systems have been devised for resolving disputes on which the parties themselves cannot agree. Perhaps it is time to begin moving away from the ultimate labor warfare of strikes, lockouts, and replacement workers and toward some alternative system of dispute resolution for more of the private sector.

Madam President, this is not a new exercise that we engage in today. Elements found in the bill have been seen in legislative offerings at least as far back as the last big labor law reform effort in the 1970's. Further, significant legislative battles have been waged on the issue in each of the past two Congresses. The fact that there has been no evolution toward consensus in the terms of this debate is a sad testament to our collective failure to address this issue realistically.

Given the long history of the underlying issues, and the work of the Dunlop Commission, there are many aspects of collective bargaining that we might productively reexamine. For example, it troubles me that unfair labor practice strikers must wait so long for a resolution of their charges. Further, it might be profitable to examine stronger sanctions against those who engage in unfair labor practices. And as one who supported labor law reform in the late 1970's, I am certainly open to suggestions on ways to streamline the process of deciding whether or not a group of workers wishes to organize.

With specific regard to permanent replacement of economic strikers, for the past few years I have stated that we should look at the special circumstances presented in concessionary bargaining situations and first contract negotiations. As I stated on the floor of the Senate during the 1992 debate, the situation presented by an employer's demand for contract give backs or concessionary bargaining demands may well be one in which the use of permanent replacements is not justified. Adoption of a restriction on this practice would address most, if not all of the instances of abuse presented to Congress as demonstrating the need for legislation on this issue.

Similarly, in first contract negotiations, where there is no established bargaining relationship, I believe a third party intermediary could serve a useful role. Neither the Senate nor the House Labor Committees have examined these ideas in their handling of this issue. Rather, the limited amendments which the Democratic majority permitted to be offered in the House were persistently rejected, while in the Senate S. 55 remained almost defiantly unchanged even in the face of fatal opposition. In the current Congress, this issue is very low on the priority list for the committees of jurisdiction.

Perhaps the biggest revolution since the Mackay decision in 1938 has been the shrinking of our world. We were an insular power, one of many, and we emerged from World War II as the greatest economic power on the planet. This was not surprising given that our country was spared from damage during the war. Nor is it surprising that our preeminence has eroded in the decades that followed the war as other countries have rebuilt and retooled.

In 1938, we could afford to consider labor-management relations in isolation. In 1994, we no longer have that luxury.

Enforcement of the present Executive order will change the face of labor relations in this country. Clearly that is the intent, but is it in the best interest of the country? That is the question. I have yet to hear sufficiently compelling answers to prompt me to vote for legislation doing what the order attempts to do. The fact that the President has opted to proceed by Executive order does not change my mind or prompt my support.

Accordingly, while I remain open to the possibility of passing meaningful and wise legislation in this area, this Executive order is not such legislation. Thus, I will vote to stop its implementation and enforcement.

Madam President, I yield the floor.

Mr. FEINGOLD addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

(Mr. JEFFORDS assumed the Chair.)

Mr. FEINGOLD. I thank the Chair.

Mr. President, I rise to oppose the amendment offered by the Senator from Kansas that would prohibit the U.S. Labor Department from expending funds to enforce the President's recent Executive order barring Federal contracts with contractors that use permanent replacements.

Mr. President, I am very pleased to follow the Senator from Illinois and the Senator from Massachusetts, who were extremely eloquent in pointing out how terribly unfair this practice of the use of permanent replacements really is.

The President has issued the Executive order, in my view, simply to restore a measure of equality to Federal labor law by guaranteeing the workers the right to strike without the fear of being permanently replaced. In this case, it relates particularly to those whose wages are being paid with Federal resources, being paid by Federal taxpayers' dollars.

I do not think Federal resources should be used to put people out of work. These are people who are exercising their rights under the Federal labor law.

Unfortunately, the measure of the Senator from Kansas would block the President's ability to protect these workers and companies that are Federal contractors.

Mr. President, this would be the second time in less than a year that the supporters of striker replacements have used what I consider to be subterfuge to undermine striking workers. In the 103d Congress, the opposition used parliamentary tools to prevent a vote on S. 5.

The Senator who is occupying the chair right now spoke a few moments ago and said he thought we had put this permanent replacement issue to bed. Well, in my view, we have not done that. We have not even given it a nap. We did not give it a chance. In fact, the American people, although some people did not like the outcome, elected a President in 1992—he did get a majority of the electoral votes—who was openly and clearly committed to passing and signing a ban on the use of permanent replacement workers.

So, no, this issue has not been put to bed. This issue has not been given a fair vote on the floor of the Senate and this issue has not gone away, regardless of the hopes of the folks who did prevail on November 8.

I believe that this particular amendment does a great disservice to the working men and women of America. In my State of Wisconsin, the abusive use of permanent replacement workers by a few—not most, but by a few—employers during labor disputes has a pretty long history. And it is an issue that I have been pretty deeply concerned about for many years. In fact, when I was serving in the Wisconsin State senate, I was the author of the Wisconsin striker replacement bill and had the opportunity to testify before a committee of the other body here when I was still serving in the State Senate, asking that there be a Federal law banning the use of permanent replacement workers.

But the issue has not even come close to resolution. These folks, trying to exercise their right, their legitimate,

lawful right to strike, have still been harmed and undermined by the use of permanent replacement workers.

Mr. President, I know that the use of permanent replacements is a many faceted issue. But to me at its core, this is the question that it raises: should workers have the right to use the strike as an economic device during times when negotiations with their employers break down? That is really the question. Because that is the issue when permanent replacement workers are used.

It effectively destroys the lawful right to strike. The National Labor Relations Act of 1935 clearly guarantees the right of workers to organize and engage in concerted activities, and included in that series of rights is the right to strike.

Workers and management have always shared relatively equally in the risks and hardships of a strike. It is no picnic for either side. Workers lose income and their families, and often whole communities, face economic insecurity and the threat of losing their homes and their savings. At the same time, a clear incentive has existed for management to come to an agreement, as they struggle to maintain production and productivity in their market share with a more limited work force.

That is the relative balance that has existed in the past, prior to the early 1980's. Because of that balance, as a general rule, strikes were to be avoided by both sides, if possible, and that was the driving force behind the success of collective bargaining and peaceful negotiations.

For many years, even during strikes, labor and management were able to cooperate and come to an agreement. That is what I observed growing up in a very strong General Motors-UAW hometown, Janesville, WI.

Management now often advertises—instead of negotiating, they advertise for permanent replacements, the moment a strike begins, sometimes even in advance. I have seen advertisements preparing to hire a nonunion force in anticipation and, in fact, in the effort to precipitate the strike.

The threat of permanently lost jobs casts a pall over the entire bargaining process and breaks down that mutual incentive to come to a peaceful collective agreement. Mr. President, as the power of the strike becomes more and more tenuous, the voice of the labor negotiators over his or her employment weakens considerably.

I do not believe, at a bare minimum, that Federal resources, Federal tax dollars, should be used to do more of this, to erode the power of working people. If the use of permanent replacements is allowed in federally financed work, we then become directly involved in further weakening the voice of the working sector of this country, or even maybe worse, maybe we are in the process here of silencing the voice of working people for good.

It reminds me, Mr. President, of an act of kicking someone when they are down. I am not saying that is the intention of the Senator from Kansas. In fact, she is the last person in this whole body that I would accuse of trying to kick someone when they are down.

I am afraid that the effect of this, the unwillingness to say the Federal tax dollars should not be used in order to assist the use of permanent replacement workers is, in fact, kicking working people when they are down, when they have seen many rough years, many years of unfair advantage to employers in management relations, many years of jobs being lost overseas, sometimes in the name of free trade, but often to the detriment of the people that have helped build this country.

During disputes between employers and employees, Government should at the very least act to ensure that both sides are playing on a level playing field. The Federal Government should not act to give an advantage to one side or the other.

At times, such actions in the past have given that advantage in the form of police protection for strikers and nonstrikers. At other times, in the form of court proceedings.

I might add that employers still have many options in overcoming or surviving a strike. There are many things they can do, apart from this very harsh act of using permanent replacement workers. They can hire temporary employees, they can stockpile inventory in advance of a potential strike, or assign supervisors to take over some aspects of production. I know this is not a first choice. But of course neither is striking ever a first choice of the working people who feel compelled to go on strike. These options exist for the employers. They have always been available to employers, and they are if no way limited by the President's Executive order.

Mr. President, last year the Washington Post ran an excellent editorial called "Women and the Right to Strike" which pointed out that as a class, women and minorities are the most in need of protection against the use of permanent replacements. They are overrepresented in low-skill low-wage jobs where it is easy to find and train replacements, while they are also in need of those jobs simply to meet the most basic necessities.

Mr. President, I find this attempt to prevent the Executive order in this case to be very surprising in light of the emphasis on welfare reform that has come through as a very important part of the so-called Republican contract. The notion of welfare reform, which I agree with, is that if somebody can work they should work.

If we are going to pass some important legislation this year to make that much more likely, what is the message of this amendment to those who are being encouraged to go to work? The message is, you will lose your welfare benefits, you will leave your children and go to work, you will not necessarily be guaranteed health care. As we know, we do not have universal coverage. We have universal coverage for the people on welfare, but not necessarily for those who work.

So this is the message that the new majority wants to give to people on welfare who want to go to work. Go to work, for maybe the same amount, maybe a little more, and you may have your jobs torn away from you in a very short period of time by the use of permanent replacement workers. No job security. No meaningful right to strike. It is the worst message we can possibly send to those people who are genuinely striving to leave welfare.

Mr. WELLSTONE. Mr. President will the Senator yield?

Mr. FEINGOLD. Mr. President, I am happy to yield to the Senator from Minnesota.

Mr. WELLSTONE. I gather from what the Senator has just said that he is trying to make a connection between welfare reform and welfare recipients—who are, in the main, women, single parents—being able to find a job they can count on. With "a job you can count on" meaning a decent wage with decent fringe benefits.

In the State of Wisconsin, has the Senator seen situations where workers have been essentially forced out on the strike and permanently replaced? Has the Senator actually seen that happen in Wisconsin? Can the Senator give, so that people know what this debate is about, are there some examples that come to mind, as a Senator from Wisconsin?

Mr. FEINGOLD. I thank the Senator from Minnesota for his question.

Mr. President, in response to the question, have we seen this happen in Wisconsin, the answer I am sorry to say is yes. Increasingly, through the 1980's and early 1990's, there were systematic efforts in certain places to use permanent replacement workers.

Among the ones that stick out is what happened to people in De Pere, WI, when International Paper chose to use permanent replacement workers. I held a hearing as a State senator, at the time, and heard some of the most compelling and troubling testimony I have ever heard as an elected representative from families that were broken by the loss of that job security that the Senator has described. In fact, I am quite sure that some of those folks were forced from being workers to being on welfare, as a result.

I saw the same thing near Milwaukee, in Cudahy, WI, another very tense, and difficult, public hearing when the story of that situation was laid out. Closer to my own home in Madison, WI,

a lot of pain, a lot of hurt, and a lot of destruction of family—another value that the new majority likes to talk about.

In the context of the Stoughton Trailer strike involving UAW workers, I always like to say my very first political encounter as a kid was when my father took me down to the UAW plants in Janesville to the Walter Reuther Hall. I remember that the gatherings there, there were a lot of Democrats there, there were Republicans there, too, in those days. It was not necessarily a partisan issue. It was pretty good spirit there in the 1960's. But when I returned in 1988, to that same hall, it was not an upbeat spirit. It reminded me of a wake, because people felt absolutely dejected and abandoned because of the use of permanent replacement workers. We have had it all over the place.

I want to reiterate to my friend from Minnesota, Mr. President, it is a small percentage of the employers, but, unfortunately, sometimes it is some of the biggest employers. Sometimes it is some of the best jobs. And it cuts at the heart of the feeling that we want to be able to give people that if they do a good job for a company and come to work on time and produce a good product, they should be able to keep that job, generally speaking.

That is something that has to be as much a part of the American dream as home ownership or little league baseball.

Mr. WELLSTONE. Will the Senator yield for another question?

Mr. FEINGOLD. I am happy to yield.

Mr. WELLSTONE. Mr. President, this Executive order really applies, as I understand it, to Government agencies that work with contractors with contracts of $100,000, or more, and only in cases where those contractors permanently replace striking workers, not temporarily replace, then the Government would no longer be willing to continue with the contract. Is that correct?

Mr. FEINGOLD. Mr. President, that is my understanding. It is not as extensive as the kind of law I would like to see passed.

Mr. WELLSTONE. And ultimately this would affect very, very, few companies because we have no reason to believe that most of the contractors doing business with the Government would engage in such a practice.

So my question is as follows: This debate now on this amendment almost becomes a debate about more than just this aim of the Senator was talking about welfare and the reports of welfare reform with jobs being key.

Does the Senator, based upon your experience in Wisconsin, does the Senator feel that this whole issue of permanent replacement of striking workers is key to the question of balance between labor and management so that people, working people in the country, whether they are in unions or not in unions, will have the ability to represent themselves and bargain and have a decent job at a decent wage for their family?

Has this amendment become really more of a debate about decent jobs for people, more of a debate about families having an income that they can live on, more of a debate about really working families and middle-class families; is that the way the Senator sees this?

Mr. FEINGOLD. In response to the question of the Senator from Minnesota, it almost has to become a broader debate. I do not believe it was the intent of the Senator from Kansas to have it be. I do not know how you can talk about just the narrow issue of particular companies, and I think the Senator from Minnesota is right that there maybe is not going to be Federal money to do this. But it does bring up the whole issue of what kind of consistency is there between this sort of amendment and the agenda that we have been talking about in this Congress and will talk about having to do with getting people to work.

Mrs. KASSEBAUM. I wonder if the Senator from Wisconsin will yield to me for a moment for a question? Going back to a question between the Senator from Minnesota and the Senator from Wisconsin a minute ago.

Mr. FEINGOLD. I will be happy to.

Mrs. KASSEBAUM. First, you implied this Executive order would not affect very many companies, that it will only touch on a few Federal contractors. I notice there is some confusion about this that maybe you can clarify.

There has been some question as to whether it would or would not affect the Bridgestone/Firestone strike for which, of course, there have been permanent replacement workers. For all intents and purposes, it has been thought that this Executive order was only proactive, not reactive. It states:

> The provisions of section 3 of this order shall only apply to situations in which contractors have permanently replaced lawfully striking employees after the effective date of this order.

In section 3, there is some confusion. It says:

> When the Secretary determines that a contractor has permanently replaced lawfully striking employees, the Secretary may debar the contractor, thereby making the contractor ineligible to receive Government contracts.

So I think it could be read that the Secretary of Labor could, as a matter of fact, go back and say that if there were permanent replacement workers, then the contractor could be debarred from Federal contracts. This places us, of course, right in the middle of a major management/labor dispute. One which, of course, is taking a real toll.

I would like to ask the Senator from Wisconsin, who has the floor, if he knows what the clarification may be? I think this could cause real confusion.

Mr. FEINGOLD. I defer to the Senator from Minnesota on that particular aspect, except to say when the Senator from Minnesota asked me how many firms do I think this would apply to, my saying I did not think it would apply to many firms was to the fact that I hope and believe most firms would not do this.

If this, in fact, does apply to the current situation you refer to, it would not trouble me. I am not going to represent what exactly that language does. I am happy to take a look at it. My view is that use of permanent replacement workers in any context where Federal dollars are involved should not be permitted.

That is what I would want it to be, but I did not, of course, draft the Executive order, and I would have to defer to the Senator from Minnesota if he knows the specific answer.

Mr. WELLSTONE. Mr. President, I thank the Senator from Kansas for her question. The President's Executive order would cover them, but the existing contract could not be terminated. It is my understanding that they would be barred from future contracts, and that is the distinction. I think that is the purpose of this Executive order.

I might also add that when I asked the question of the Senator from Wisconsin, my working assumption—which I think is a correct one—is that ultimately we are talking about what kind of companies might, in fact, engage in this practice, because the Senator from Wisconsin is correct; most companies are good corporate citizens and good businesses and do not engage in this practice. Probably we are talking about very few cases.

Mrs. KASSEBAUM. Mr. President, I appreciate the answer. I think it is still very unclear, and I think it indicates why there would be a lot of uncertainty about this Executive order. I appreciate the answer.

Mr. FEINGOLD. Mr. President, if I may conclude, I know the Senator from Minnesota wishes to speak.

The senior Senator from Massachusetts referred to the people who would be affected by the use of permanent replacement workers as the backbone of our country. That is exactly what they are. They are not the people who so many people like to rail against who are not willing to work who can work; these are people who work, who have worked hard, who report to work every day, many of whom have to have both parents working to make ends meet. They are trying awfully hard to make it. All they want is to know that this country, whether it be a Democrat majority or a Republican majority, is committed to helping them get to work and have a job and make an honest living.

I thought that is what this whole welfare debate is about; that everybody

is better off if they are working and that if they are not working, they are taking advantage of the rest of us. That is what I thought it was about. I thought that is why so many working people are frustrated and irritated by our current welfare system.

What kind of a mixed message is it to kick people who are working and not guarantee them the right to strike at the same time you tell them get back to work and help us out in this society by working and paying your taxes and make our economy go? It does not add up.

This Republican agenda is contradictory. Are we for deficit reduction, or are we for tax cuts? Are we for getting people back to work, or are we for driving people out of work by the use of permanent replacement workers? Which one is it? Where is the sense of community? Where is the sense of helping somebody when they are down? Where is the sense of making sure that if somebody is really trying to work, that we will do whatever we can to make sure that that job has some stability, has decent wages, some rights, some health insurance. Which is it?

I believe that every Member of this body is committed to those principles in their heart, but when you look at the agenda and the way that it works at cross-purposes with an amendment like this, it is very, very troubling; and it is hard for me to tell the hard-working people in Wisconsin, those who are part of organized labor, in particular, that you really mean it, that you really mean it when you say you want people to work. If you want them to work, give them a fair chance to have a balance to keep those jobs when the management is being unfair.

Mr. President, I strongly oppose the Kassebaum amendment for the reasons I have outlined. I encourage my colleagues to vote against it.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. I thank the Chair. I thank my colleague from Wisconsin for his strong words on the floor.

Mr. President, I could read from my prepared statement. I think I would rather not. I just would like to try to lay out, if you will, the basis of my position and marshal evidence. I think that it is very important that the U.S. Government not be on the side of contractors who have permanently replaced their workers who have gone out on strike.

Let me say one more time, as I understand this Executive order, if the Secretary of Labor issues such a ruling and it is clear that a contractor with a $100,000-or-more contract has, in fact, permanently replaced striking workers, then that company could be barred from future contracts after the careful, deliberative process set forth in the order is exhausted. I think that is the key clarification.

I think that this Executive order is very important. I do not think it is very important so much because, in fact, it will end up covering that many businesses. I think it will be rather narrow in scope, but I think it is important that the Government be on the side of what I would call basic economic justice.

A word on the context, Mr. President. In the early 1980's, there was the PATCO strike, and many striking air traffic controllers were permanently replaced. I think what has happened—and I wish this was not the case, and maybe it had something to do with the mergers that took place in the 1980's, maybe it had something to do with different hard-nosed management approaches—but what happened really, with the PATCO strike I think being the triggering event, is that we moved into a different era of labor/management relations wherein the implicit contract between workers and management was torn up.

In addition, I would argue that in the international economic order—and the Senator from Illinois was quite correct when he said the United States almost stands alone among advanced economies without having some protection for a work force against being permanently replaced—I think the key for our country is going to be a trained, literate, high-morale, productive work force.

I know the Senator from Kansas agrees because I have seen her work and admire her work in promoting this.

I think the disagreement we have is that when people can essentially be crushed—and I have seen too many people who have been crushed in my State of Minnesota—when they go out on strike because they feel they have no other recourse but to do so, it leads to just the opposite of what we need when it comes to real labor/management cooperation.

The process is fairly simple, and I wish I did not have to identify this process. It is not an invention on my part. Too often, companies—I am very pleased to say not most companies, not most businesses—provoke strikes as part of a plan to replace striking workers and bust unions. And this is a relatively small number of rogue employers. I think, in fact, many businesses would greatly benefit from this reform because they are not the real culprits here. But too often, certain employers will force a unionized work force out on strike, permanently replace them, then move to have the union decertified. That is union-busting, plain and simple.

Now, Mr. President, it could very well be that part of this debate about this amendment—although I think the Senator from Kansas can speak for herself better than I ever could; I do not actually think this is her framework—but as I see it, as I analyze the votes on this amendment and this question, at least some of the votes, some of the votes are going to really have to do with the larger question than this amendment.

The larger question than this amendment is this Contract With America—I think it is more a con than a contract—that we see being pushed forward with a vengeance in the House of Representatives. The connection I make is that I think what we see happening right now—and it is why I come to the floor feeling so strongly about this amendment, because of this larger context—is an effort on the part of some of the leadership in the House to overturn 60 years of people's history. I actually do not think that this Contract With America is an attack on the 1960's. It is an attack on the basic reforms put in place in the thirties, which have served us well for decades.

Now, Mr. President, some of us, or some of our parents—in my case, I guess it was my grandparents—gave a lot of sweat and tears to make sure that in the 1930's we moved forward as a Nation with some protection for people against strikebreaking, some protection against the fear of being unemployed, some protection against jobs that paid wages on which people could not support their families. This is when we protected in law the right to form or join a union. This is when we developed some of our collective bargaining machinery. This is when we passed minimum wage legislation. This is when we passed Social Security. This is when, Mr. President, if we want to talk about contracts, we actually built a contract in the United States of America the purpose of which was a more just system of economic relationships for people.

But, more importantly, I think it was a huge step toward greater stability in the workplace, and toward greater fairness. We no longer said if you own your own large corporation and you are powerful, then you matter, but if you are a working family, you do not. This was an important contract.

Quite frankly, Mr. President, I see a real effort in the Congress, especially on the House side, to rip this contract up.

Mr. President, there are an estimated 14,000 workers that are covered by the NLRA that are permanently replaced each year by American employers and thousands more under the Railway Labor Act.

Now, there was a report done by the General Accounting Office in January 1991—and maybe there is a more recent report. I think all of us agree that GAO does very rigorous work, and in this report the GAO indicates that since 1985, employers have hired permanent replacements in one out of every six

strikes and threatened to hire replacements in one out of every three.

Mr. President, the right to strike has become the right to be fired. You could, if you wanted to, just travel around the United States, and in State after State you could talk to priests, ministers, rabbis, mayors, small business people, union people, and others affected by long and bitter strikes that divided communities all too often precipitated by the use of outside replacements.

In my State of Minnesota, I could give many, many examples of men and women who essentially were forced out on strike. Nobody goes out on strike on a lark. But they were faced with a package of concessions that they could not make in terms of their own economic situation and their basic dignity. The companies knew they could do it to them. The companies wanted them out on strike. The companies then permanently replaced them and then decertified them. That is union busting.

Now, I think this Executive order just simply says that the U.S. Government will not be on the side of union busting. This Executive order—and again, that is why I think it is such an important issue that goes beyond this Executive order—says that the U.S. Government will be on the side of working families, that the U.S. Government will be on the side of collective bargaining rights, that the U.S. Government will be on the side of the right to strike, and that the U.S. Government takes the position that the right to strike should not become the right to be fired.

I do not know how many of my colleagues—maybe many or maybe very few—have actually visited with families who have essentially been wiped out because the husband or the wife or both were permanently replaced. I have. And I do not say "I have" to suggest that I care more about working people than anyone else. Many Senators do. We reach different conclusions, sometimes, as to the best way to support families.

But I have seen, and I will say this to my colleague from Kansas—I have seen too many broken dreams and broken lives and broken families, all caused by permanently replacing men and women. It is just shattering.

I will say this to my colleague from Kansas, I will, with every ounce of strength I have as a U.S. Senator, fight to end this practice. That is why this amendment assumes a larger importance than this amendment. That is why this amendment assumes a larger importance, and that is why this amendment must be stopped.

There were many of us—one is no longer here on the floor of the Senate because he retired, certainly he was one of my mentors, Senator Metzenbaum from Ohio—who fought and fought and fought for change. S. 55 would have been the change. That would have prohibited employers—I am not talking about just contractors with the Government—from permanently replacing striking workers. It was filibustered. Let me repeat that one more time. It was filibustered.

I remember meeting—I think Sheila came out with me—on a Sunday morning in Minnesota with a group of workers who had been permanently replaced. They were outside with their families. It was raining. Certainly there were as many women as men who worked for this company. I remember saying to them: I really have some hope that we will be able to pass this legislation.

I do not think they thought that meant they would get their jobs back. But it represented some real hope for them, because they had been very courageous. What this company asked of these workers, I say to my colleague from Kansas, was unacceptable. I do not think there is a Senator here who would have been able to have accepted those terms.

They went out on strike. They were scared to death. They knew they probably were going to lose their jobs, but it was a matter of dignity. You know, dignity is important to people.

I said: We have this piece of legislation and I believe the United States of America is going to join the other advanced economies by providing some protection for working people, working families. But we could not get a vote on it. It was filibustered.

Mr. President, now we come to this amendment by my good friend from Kansas, which is an attempt to effectively overturn the President's Executive order. The Executive order, which sends I think a very, very important and positive message to people in this country, which is that the Government is not going to be on the side of companies that permanently replace workers, companies that quite often force people out on strike, in keeping with a typical pattern—forcing people out on strike when people cannot accept these concessions which are unreasonable; then bringing in permanent replacements; then decertifying the union; and then busting the union. The U.S. Government will not be on the side of union busting.

I think this amendment also brings into focus on the floor of the U.S. Senate a whole question of this Contract With America. I believe that. I do not think that is the intent of the Senator from Kansas, but that is why I feel so strongly about this debate, about this amendment.

I say to my colleague from Wisconsin, what is now going on—actually legislation that is being passed on the floor of the House of Representatives—is beyond the goodness of people in this country. It is mean-spirited, because it targets the citizens who are the most politically vulnerable and who have the least political clout. That is why I have come out with this amendment on children over and over, which the Chair voted for and my colleague from Wisconsin voted for, to get the Senate on record in favor of ensuring that nothing we do this year will create more hungry or homeless children.

When I first came out with this amendment at the beginning of the session, a sense-of-the-Senate amendment, there were some colleagues who thought this is just symbolic. Some people said this is just politics. But, my gosh, look at what has happened on the House side, and what is coming over here to the Senate. We can see what is happening to the school lunch program, the school breakfast program, nutritional programs, the child care centers. Look at the headlines every day. The other day on the floor of the Senate I observed: Here is a front page Washington Post piece with a title, not "Can Johnny Read?" but "Can Johnny eat?" And you begin to wonder. This is not the America we know.

I insist that this debate is all about families. I know my colleague has a question and I will be pleased to yield, but if I can just make this last point. I think, whether we are talking about nutrition programs and children, whether we are talking about Pell grants, or low-interest loans for higher education; whether we are talking about affordable health care or whether we are talking about minimum wage; or the Small Business Administration—guaranteed loan programs, 8-A loan programs and the like—or whether we are talking about jobs, jobs that families can count on, jobs that pay a decent wage with decent fringe benefits—that is the core question here.

On this question I think the administration is in the right. I think this Executive order is extremely important and ultimately it gets down to the question, to quote an old song, "Which Side Are You On?" It happens to be an old labor song sung by Florence Reece—"Which Side Are You On?" Which side is the Government on? Is the Government on the side of companies that permanently replace workers, that crush workers? Or is the U.S. Government, the Government of the United States of America, on the side of working people and working families?

I want to continue to speak but if the Senator has a question I will yield.

Mrs. KASSEBAUM. Mr. President, no, I do not. I would simply, though, make a statement. This is not about the Contract With America. This is not about whose side one is on. I would say to the Senator from Wisconsin, what this is about is the ability of the President, by an Executive order, to change the labor law of the land which has existed for 60 years.

The debate on whether to have a permanent replacement of workers can come at a different time. I am sure it will. It has through the past two Congresses. But that is what troubles me—and I know the Senator from Wisconsin has the floor. It is not a question so much as to state indeed what this debate is about.

Mr. WELLSTONE. Mr. President, I say to my colleague from Kansas that I respectfully disagree. The reason I say that is I do not believe that we can decontextualize this amendment proposed by my colleague from the reality of the agenda that is being pushed by the Republican Party in this 104th Congress. I believe all of the parts are interrelated. That is the way I view this amendment. I view this as being connected to all these other questions. Is there going to be adequate nutrition for children? Whatever happened to affordable health care? Are people going to be able to afford higher education? How come the proposed cuts are so targeted, as Marian Wright Edelman and others have said over and over again, on the most vulnerable citizens? Why are we not willing to raise the minimum wage? And what are we doing, coming out with an amendment that essentially tries to undo an Executive order that only says the U.S. Government ought not to be supporting companies that permanently replace workers, given, I think, a rather bleak and shameful history of the last decade or so as to what has actually been happening to working people in this country?

So I say to my colleague, I respectfully disagree.

Does my colleague have a question?

Mrs. KASSEBAUM. No. I will respond when the Senator from Minnesota yields the floor.

Mr. WELLSTONE. I thank my colleague.

Mr. President, I know the Senator from Iowa will be here in a moment. I will be pleased to yield the floor to my colleague from Iowa.

Mr. President, I would like to just quote from page 1 of a General Accounting Office report published a few years ago on striker replacement in the last 20 years. It is a summary to give some context for my remarks and my response to the Senator from Kansas.

> The number of strikes in the United States during the 1980's was about one half what it was during the 1970's. More specifically, strikes declined about 53 percent in the 1980's compared with the 1970's. They estimate that in strikes reported to the Federal Mediation and Conciliation Service in 1985 and 1989, employers announced they would hire permanent replacements in about one-third of the strikes in both years and hired them in about 17 percent of all strikes in each year. They generally found little difference in the use of permanent replacements by employers in large force strikes.

Mr. President, is this Executive order meeting a real need? Yes. Is there a precedent for it? Yes—ample precedent.

One more time I say to my colleagues that I believe there is a larger significance to this amendment than may originally be apparent. This amendment goes to the very question of workplace fairness. This amendment goes to the very heart of the Contract on America's assault on working families' ability to rely on jobs that pay decent wages with decent fringe benefits. This amendment is an attempt to undo an Executive order, I think, which is narrow in scope and which makes it clear that the Federal Government will not be on the side of companies which permanently replace striking workers. The Federal Government will not be on the side of union busting. The Federal Government will not, through taxpayers' money, support unfairness in the workplace. The Federal Government will side with regular working people. The Federal Government will side with working families.

And while I believe that this Executive order represents a lawful exercise of Presidential authority, I think it also represents something more. It represents a commitment by the President of the United States of America to many, many, many working families in our country.

Please remember, when I say working families, I mean union and nonunion, I mean the vast majority of people in this country who in fact are employed.

At this point, Mr. President, if the Senator from Kansas does not have a question for me, I yield the floor.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I want to respond to several things that have come up during the course of the debate this morning.

First, this amendment is not an effort to embarrass the President.

Second, I feel strongly that this Executive order sets a precedent that we need to carefully examine.

Third, we all care about justice in the workplace and for the workers. But it has been stated that this Executive order will actually restore the balance. That through this Executive order there will be balance that then will be maintained between management and labor. I argue that actually it will totally unbalance the labor/management relationship which has existed over 60 years under our Federal labor laws.

Sometimes it has been abused by management. Sometimes it has been abused by labor. It was stated that if management can hire permanent replacement workers, then it would be very unfair to the strikers. Why would, indeed, strikers not be able to have any voice at that point? Strikes have continued on, and at great loss to those who were striking, where permanent replacement workers have been hired. However, if you were to forbid any permanent replacement workers, then strikes could continue on forever and the workplace could be totally shut down. A business could be totally shut down. Leverage has to be equal on both sides.

I suggest that when discussing this Executive order it is very murky to talk about either Caterpillar or Bridgestone/Firestone because at some point large companies, in fact many companies large or small, have Federal contracts. This would say, if indeed a strike is ongoing—which Bridgestone/Firestone is—and there have been permanent workers hired, it does apply to them.

So I suggest the Executive order will not restore the balance between labor and management. It actually undermines it. This is not a debate about the minimum wage. This is not a debate about Davis-Bacon. This is not a debate about school lunches or child care or welfare reform—all the things that have come into play. It is indeed not about any of these.

I suggest to the Senator from Minnesota, because he cares passionately about this, that there could be a time when a Republican President could issue an Executive order banning all strikes. If you start down this slippery slope of totally disregarding labor law, the legislative authority to enact law, this could happen. Where authority to shape labor law should be is in the halls of Congress where it is determined through legislation.

There has been much talk here about President Reagan and President Bush by Executive order having done the same thing.

If I may, I will just go through this again. The Bush administration did issue an Executive order requiring Federal contractors to post a notice informing workers of their rights under Federal labor law. That is a given. That was not, in any way, changing labor law.

President Reagan, when air traffic controllers went on an illegal strike, did replace those striking workers with permanent replacement workers. There was legislation that followed in both the House and Senate wanting reinstatement of those fired air traffic controllers after a certain period of time, but this legislation did not pass. And that is why we get to the third one, Mr. President, which I suggest might be a little murkier—and I listened to Senator KENNEDY's arguments regarding the prehire agreements.

There are some, in fact, who believe that President Bush's Executive order was illegal although it was never challenged in court. It could have been challenged, just as I assume this Executive order will be challenged. Unlike the case of the prehire agreement Executive order, we are currently faced with a situation where Congress has

declined to change the law for more than 60 years. I argue that this striker replacement Executive order has far broader implications. If we continue down what I have said is a slippery slope, I fear we may see future administrations that will then be trying to limit not only the rights of management but the rights of workers as well.

This is not the way we should determine major labor law—by an Executive order. I share many of the sympathies that have been expressed by either the Senator from Wisconsin or the Senator from Minnesota about the desire to see stability in the workplace, the desire for good wages, the desire for those who are working today to know they have a future in that workplace instead of uncertainty from month to month, if not year to year. But this is not the answer. And I suggest, Mr. President, that it creates an imbalance that will cause greater uncertainty in the workplace and greater instability in the workplace, not less.

As we look to the future of trade, productivity, and competition, we want to be able to be partners with both labor and management and try to realize a stable and productive workplace. But through this Executive order, we have undermined, I think, and further eroded a sense of trust and a responsibility that should exist between labor and management.

If we tie one hand behind management's back, or if someone finds a way to tie one hand behind labor's back, we have created imbalance. Who is to say what issue is fair or unfair? It cannot be done here. Many of us argue this about the baseball strike. We have said that Congress should not intervene in these strikes. There must be some credence given to the bargaining table, where management and labor have to come together, I hope, for the best interests of both sides.

That is what this argument is about. It is not about the Contract With America and all of these other extraneous issues. It is about an Executive order that takes away the rights of Congress to, by legislation, enact or reject legislation—in this case, affecting labor law, which has always been our prerogative.

We can have the debate once again on permanent replacement for striking workers at another time and in another forum. But this debate is simply about an Executive order. The reason I add it as an amendment to the defense supplemental is that many of those who have worked with defense contracts are the very workers and businesses that could well be affected by this Executive order.

That is why it seems to me to fit on the defense supplemental legislation before us today. I do not think there needs to be extended debate because I believe we all know what the issue at hand is and how we feel. I would be happy to enter into a time agreement. I would be happy to have the vote in a limited amount of time, and stand willing to do so, Mr. President, if that will be agreed to by the other side of the aisle.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, first of all, I want to make it clear that when it comes to time agreements—and I think this is a sort of fundamental difference we have. This is a central, central, central question. One more time, I say, with all due respect to my colleague from Kansas, first, I think the significance of this amendment goes beyond the Executive order. I think it cannot be contextualized to what I consider to be really sort of an assault on working families and middle-income families in America.

Second, I choose to define the issue differently. Each Senator has to make his or her own decision. But I believe this is a question of whether or not the Federal Government will be on the side of a practice which, unfortunately, has become all too common during the decade of the 1980's and early 1990's, which is essentially demanding concessions of a work force that you know they cannot make, forcing them out on strike, hiring permanent replacements, decertifying the union, and busting the union.

So the question is, is the Government of the United States of America going to use taxpayer dollars to encourage that practice, to be on the side of that kind of practice—the practice of union busting, of breaking unions, of driving many, many honest, hardworking people essentially out of work because they are replaced? I do not think so. I think it is a question of where the Government stands. This Executive order says we ought to have a Government that stands on the side of workplace fairness.

Actually, I heard my colleague from Illinois say earlier that this is but the beginning of what we should have done, which was S. 55, which joined all of the other advanced economies with legislation to prohibit this egregious practice. We would be so much better off—I will not repeat all of the arguments I made earlier—in terms of productivity and labor-management partnerships, and in terms of higher levels of morale.

I ask my colleague from Illinois whether it is his intention to speak on the floor.

Mr. SIMON. No.

Mr. WELLSTONE. Well, let me finish my remarks. I am expecting the Senator from Iowa to be here in a moment.

Let me just clear up this interpretation on Bridgestone-Firestone. Negotiations between Bridgestone-Firestone and the United Rubber Workers began in March of 1994, and the collective bargaining agreement expired on April 24, 1994. The United Rubber Workers called the strike against Bridgestone-Firestone on July 12, 1994. If the Executive order had been in effect, Secretary Reich would have intervened immediately by notifying the company that any effort to permanently replace its workers could cause Bridgestone-Firestone to suffer immediate termination of several million dollars worth of contracts it has with the Federal Government. This action might have been enough to persuade Bridgestone-Firestone not to permanently replace the strikers.

On January 4, 1995, Bridgestone-Firestone permanently replaced 2,300 striking workers, without any warning, by sending letters to the strikers at their home. If the Executive order had been in effect, Secretary Reich could have immediately investigated and made a finding that the company violated the policy in the Executive order, that the executive branch will not contract with employers who permanently replace striking workers, and notified all of the agencies that have contracts with Bridgestone-Firestone that they should terminate their contract. These agencies would have terminated the contracts, again putting pressure on Bridgestone-Firestone to attempt a reasonable settlement of the strike—the same kind of pressure that the strikers were under, I might add—at the time.

It also says, "The Secretary of Labor may pursue a debarment action against Bridgestone/Firestone after the executive order takes effect. The debarment would block Bridgestone/Firestone from getting any new Federal contracts"—any new Federal contracts—"until its labor dispute is settled."

The language is very clear. The interpretation is very clear.

Mr. President, I yield the floor to my colleague from Iowa.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I very strongly oppose the amendment offered by the Senator from Kansas. Instead of passing this amendment, we should be saluting the leadership of President Clinton in providing a good degree of protection for workers that Congress failed to protect last year in the striker replacement bill.

American workers and companies doing business of over $100,000 with the

Federal Government can finally be assured that they will not be permanently replaced if they go out on a strike. While that represents only 10 percent of all contracts, this order will affect 90 percent of Federal contract dollars.

Over the past decade, a worker's right to strike has too often been undermined by the destructive practice of hiring permanent replacement workers. Workers deserve better. Workers are not disposable assets that can be thrown away when labor disputes arise.

When we were considering the striker replacement bill last year, the Senate Committee on Labor and Human Resources heard poignant testimony about the emotional and financial hardships that are caused by the hiring of permanent replacement workers. We heard of workers losing their homes, going without health insurance due to the cost of COBRA coverage, as well as the feelings of uselessness that workers often feel when they are permanently replaced after years of loyal and efficient service.

The right to strike, as we all know, is an action taken as a last resort, for no worker takes the financial risks of a strike lightly. I have never, in all my years, met one worker who would rather be on strike than he would be in the plant working. The right to strike is, however, fundamental to preserving a worker's right to bargain for better wages and better working conditions.

I challenge those who say they support the Wagner Act, and the right of collective bargaining, and yet say that if workers go out on a legal strike, that company can permanently replace them. In essence, that position means that there really is no right to strike; there is only a right to go out and be replaced.

And if there is no right to strike, then there is no right to collective bargaining. Because there is only one thing and one thing alone that the worker brings to the bargaining table and that is his or her labor. They do not have money to bring to the table. They do not have contracts. If they cannot withhold that labor, then there is no real effective bargaining position for labor. Then they are going to have to take exactly what management wants. If they do not take what management wants, then they can go out and strike, but then management says, "We will bring in permanent replacements: you are done and you are out the door."

So what we have in America today is no right to collective bargaining. It is a sham, a phony right.

The kind of rights that workers enjoy in other capitalist societies, whether it is Great Britain or France, all over Europe or even in Japan—and I will have more to say about Bridgestone—workers there do indeed have the right to strike, and they cannot be permanently replaced.

So only in America, the bastion of free labor, the country that gave the world the kind of laws under which labor can exert its legitimate rights and bargaining rights, this country has now taken a step backward of saying, "No, there is no more right to collective bargaining in this country."

Recent studies have shown that the stagnation we have seen in middle-class standards of living is closely correlated with the decline of unions and the loss of meaningful bargaining power. A Harvard University study showed that blue-collar incomes have dropped in constant dollars from $12.76 an hour in 1979, down to only $11.51, a drop of almost 10 percent. If unions represented just 25 percent of the work force, that wage would be nearly $12 per hour.

At the same time, workers are losing the benefits that unions were able to negotiate. Since 1981, fewer workers have health insurance, pensions, paid vacations, paid rest time, paid holidays, and other benefits. Without the bargaining power of a union, companies provide these benefits only out of the goodness of their hearts. Without the right to strike, a right that is theoretically guaranteed by law but that is in fact totally undermined by permanent replacements, workers have virtually no bargaining power left.

The right to replace workers is insidious. If one employer in an industry chooses to cut costs by breaking the union and cutting the workers' salaries and benefits and dignity, then all the other companies in that industry are faced with having to compete against a cut-rate, cutthroat business, or they are going to have to follow suit.

A company has to respond to its shareholders. It cannot be beat by the company that treated its workers shabbily. So, since it has to respond to its board of directors and the shareholders, they follow suit. It is insidious. It is like dominoes. One company starts it, other companies have to follow suit or they are going to lose market share.

Workers faced with being replaced have to make the choice of staying with the union and fighting for their jobs or crossing picket lines to avoid losing the job they have had for 10 to 20 years. Is this a free choice, as some of our colleagues would suggest, or is this not really blackmail? It takes away the rights and dignity of workers in this country.

What does it mean to tell workers you have the right to strike when exercising that right means that you will be summarily fired and replaced by another worker?

This is not about whether a company has to close its doors in the face of a strike. This only concerns the permanent replacement strikers. Permanent replacements are given special priorities in their new jobs, placing new hires above people with seniority and experience. We are not suggesting that replacement workers cannot compete for jobs. They just should not get special rights over and above those of the workers who have devoted their lives to the company.

As a nation, we have a choice: Continue down the path of lower wages, lower productivity, and fewer organized workers, or take the option pursued by our major economic competitors of cooperation, high wages, high skills, and high productivity.

We want to pursue that high-skill path. We must do it with an organized work force. We cannot do it with the destructive management practices of the past decade such as the hiring of replacement workers.

Instead, we need new approaches to management that foster enhanced labor-management relations and cooperative approaches that stimulate employee productivity and enable management to get the most from its employees' skills, brain power, and effort.

Our Nation cannot afford to limit our competitiveness through practices that promote distrust between our workers and our managers. Instead, we must work for the mutual interest of all parties. I believe the President's Executive order is a positive step toward such goals.

Mr. President, this is an issue of particular interest to my State of Iowa. In January, Bridgestone/Firestone, a large employer in the Des Moines area and other Midwestern States, announced the permanent replacement of nearly 3,000 workers involved in the strike against the company for better working conditions and fairer treatment by their employers.

The bargaining sessions had broken down and the employees exercised their legal right to strike. This is Bridgestone/Firestone, and maybe not too many people have heard of Bridgestone, but certainly everyone has heard of Firestone Tire and Rubber Co. Firestone sold out to the Bridgestone Corp., which is a wholly Japanese-based corporation based in Japan, which bought the Firestone Co. and now it is called Bridgestone/Firestone.

Many of the workers at the Bridgestone/Firestone plant in Des Moines are folks I grew up with. I come from a small town of about 150 people. Most of the people in that town either worked at John Deere or they worked at Firestone.

So I know what these people are like. They are good people. They are hard-working people. They are churchgoing people. They support their schools. They have good, strong families.

What does this say to our working people of this country? Certainly we have to understand we cannot just take people like that and throw them out on the trash heap. There is something about dignity, something about the

fact that these people put in all these years for this company. And it is not as if they are asking for the sky and the Moon and the Sun and the stars in bargaining.

As a matter of fact, a couple of years ago, Bridgestone/Firestone asked the employees to do certain things, and they did. They asked them to increase their productivity at Bridgestone/Firestone. Let me read a letter from one of those employees sent to me in January of this year. This is quite a long letter so I will not read the whole thing.

Sherrie Wallace is a Bridgestone tractor tiremaker:

> I was raised to respect my peers, act responsibly to my community, do the very best I could on whatever I did * * *.
>
> When Bridgestone came to each of us asking for help because we were not doing as well as the company needed to do, we all did our best. They asked me for one more tire every day and to stay out on the floor and forego my cleanup time. Not only did I respond, so did each and every member of the URW. Not only did I give them the one more tire per day, I gave them three times what they asked for. Our production levels soared. We threw ourselves into our company believing that we all must succeed together in order to create a better way of life for all. The membership joined committees and we became involved, we gave them our hearts. We began to believe this company was different. We gave them our input to create a better working environment. To increase productivity we began to meet our production levels. We were proud of our company and our union. Together, we did make a difference. It is these things that make me wonder why does Bridgestone now demand such unreasonable demands?
>
> This is not an issue of money. It is an issue of work ethics, fairness to your employees, good working conditions, reasonable working hours and benefits.

Now, Mr. President, let me talk about this a second. It is not about money. Let me give one of the things that Bridgestone was demanding of its workers in terms of negotiating agreement. Bridgestone, for as long as I can remember—Firestone since I was a kid growing up—they always had three shifts a day.

I know the present occupant of the chair is from the State of Ohio, and I know they have a lot of industry there. I know that the three shifts, the 8-hour shifts, three shifts a day, has been pretty commonplace in our history of this country. Three shifts a day, 8 hours a day. And as a person goes up the seniority level—obviously, when you start at a plant you get the graveyard shift. Stay there longer, you get the evening shift. And after a while you work up and you get the day shift.

That has been a well-accepted practice in our country for a long time. At least with that kind of working condition, you knew when you went to work, when you came home, you knew when you had time off to be with your family.

Here is what Bridgestone wanted their employees to do; not three 8-hour shifts a day but two 12-hour shifts a day and there would be three shifts. So here is what it would do: You would be on 3 days working 12 hours and then you would be off 2 days; then you would be on 2 days working 12 hours, and you would be off 2 days; then you would be on 3 days 12 hours, and off 2 days; then you would be 3 days on and 2 days off. See what they are getting at?

How would you ever know when you will be home with your family? How could you plan a Little League activity on Saturday or Sunday? You might be home one Saturday, and then you might not be home for a couple Saturdays after that. You might be home in the middle of a week. When you work 12 hours a day, how do you spend time with your kids and family?

I have to say, Mr. President, who knows as well as I do, that a lot of these people, now both husband and wife are working. Take one of them working a 12-hour shift and the other might be working an 8-hour shift someplace else. They have precious little time together. This is what Bridgestone is demanding.

I said Bridgestone is a Japanese company. Do they do that in Japan? No. They have three 8-hour shifts a day, with the seniority system. Would they ask their workers in Japan to go to a rotating 12-hour shift? Not on your life, because they have agreements with those workers. If they tried to do something like that, they would have a strike and in Japan they cannot permanently replace those workers. But they can here.

Well, like Sherrie Wallace said, it is not even an issue about money. But if we want to talk about money, we will talk about it a little bit. A person might think, however, that Bridgestone probably has better productivity and lower wages in Japan. Not true. Productivity is higher here per worker in America.

Mr. President, the average annual wage of a Bridgestone/Firestone employee in Japan is $52,500 a year. The average wage for that same Bridgestone/Firestone employee in the United States is $37,045.

But this issue is not about the money. That is not the point. The point is, what kind of working conditions are they going to have? Are they going to be able to spend time with their families? I might add as a postscript, since the last time I gave this speech on the floor about this—Senator SIMON and I have worked very closely on this—Senator SIMON got hold of the Bridgestone people at their headquarters in Tennessee. They agreed to come back, sit down and talk. And I came out on the floor and congratulated them. I said, "I am glad to see that. Maybe we will get some movement here."

What has happened since that time is the Bridgestone/Firestone people basically came in and said, "Here is our offer, take it or leave it." That is not talking, that is not negotiating.

Since I last took the floor to talk about this, it looks like Bridgestone/Firestone had no intentions to sit down and bargain in good faith or negotiate at all. We thought they were; we hoped they were. The workers even agreed—even agreed—to save their dignity and to save their jobs, they agreed to go to the 12-hour shift. I do not think they ever should have agreed to it, but they did. Guess what Bridgestone/Firestone said? That is not enough. They want further concessions.

I think it is absolutely clear that in the case of Bridgestone/Firestone they only want one thing: Bust the union, drive down the wages to the lowest possible unit they can get, squeeze them as much as possible.

Mrs. KASSEBAUM. I wonder if the Senator will yield for a question.

Mr. HARKIN. I will be delighted to.

Mrs. KASSEBAUM. I do not want to get into a debate about Bridgestone's policies in this country, but wouldn't the Senator from Iowa agree that labor law is very different in Japan? So I think that when you say that in Japan they could not do this, this is because they have different labor laws in Japan and seldom have strikes. I do not think it is an exact comparison about what they may be trying to do in the United States versus the fact they would not do it in Japan. There are many reasons they cannot do it in Japan, is that not correct?

Mr. HARKIN. Is the Senator saying—

Mrs. KASSEBAUM. They do not strike in Japan.

Mr. HARKIN. But they have the right to strike and they can strike and they cannot be permanently replaced. It is against labor law in Japan to have a striking worker permanently replaced.

Mrs. KASSEBAUM. We can debate the differing interpretations of Japanese labor law, but I do think it is different. I just wanted to say that I think it is unfair to compare the two. At some point, I will go into it, but I wanted to make that point. I thank the Senator.

Mr. HARKIN. I appreciate the Senator. I will be glad to engage in more dialog if my friend from Kansas would like to do that. I am not suggesting the labor law in Japan is the same as in United States. I am just saying in regard to this one company, what they are doing here in the United States of America they would not be allowed to do under Japanese labor law. That is all I am saying.

I know labor laws are different, but they would not be allowed to do in Japan what they are doing in this country. That is the point I am making.

I want to make a further point, too, that I do not want to be accused of Japanese bashing. The fact is, most

Japanese companies that operate in America do not operate in this way. In fact, a lot of the Japanese companies that operate here have darn good working relationships with their workers, with organized labor. They have sat down at the bargaining table and have bargained in good faith. In fact, in many ways, they have been better than some U.S. companies, as a matter of fact.

I am not saying this is endemic of all Japanese companies. In fact, this is a rogue Japanese company, quite frankly. I think it is casting a bad light over a lot of other Japanese companies. We said that to the Ambassador from Japan—and others said it to the Prime Minister when he was here. If you get one bad apple in the barrel, like Bridgestone/Firestone, it can spoil the whole barrel.

I will be glad to engage in any further dialog with the Senator from Kansas on this issue later on, if she so desires.

Again, my point was that Bridgestone/Firestone I do not believe now is acting in good faith. I thought before maybe these were bargaining techniques, to hold out a little bit. We have been through this before. But after the last instance in which they indicated they were going to sit down and bargain and talk and then they just basically said, "Here is our offer, take it or leave it," it indicates to me that if they ever were bargaining in good faith, they certainly are not operating in good faith right now.

I wanted to finish a little bit more of Sherrie Wallace's letter.

You can not know how betrayed we American workers feel. You can not know the hours of fear and heartache we have endured. You can not know how we fear for our safety when we are on the picket lines. We are just average family people pursuing a dream called the "American dream."

Many of us in the plants have injuries that we have substained because of our employment at Bridgestone. Back injuries, muscle tearing, joint replacement, arm injuries, carpal tunnel, cancer and asbestosis these are just a few. Many of our brothers and sisters have died because of conditions at these types of companies. Many of us just can't get another job. Who would hire half a man or woman. We can't stand to lose our jobs. There is no place else to go. Many of us are unfit to work anywhere else. Where do you go to work when your arms hurt you so badly you finally have to have surgery. Yet knowing full well you will never fully recover from the physical and mental abuse you have endured. You know that the pain will never fully go away. Your physical abilities will never be the same. It is unconceivable that this company would throw you aside like a piece of used up machinery. But they did and they still do.

* * * You see, we are one of those families that both husband and wife work at Bridgestone/Firestone * * *. We both have lost our jobs, our benefits and our livelihood. We have had days and nights of no sleep, wondering where our life is heading. Trying to keep the "American dream" alive with dignity, conviction to stand up for what you believe in and hope * * *.

Mr. President, I ask unanimous consent to print the letter in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JANUARY 8, 1995.

Senator HARKIN.

DEAR SENATOR HARKIN: You have been on my mind since the day I heard you speak in Des Moines, Iowa at our local 310 United Rubber Workers rally in December. I was so proud of you. I was proud that you represented me and my family. You gave me hope for my future when at a time like this there seems to be no bright future. You seem to know my frustrations, my pain and my intense anger towards a foreign owned company who truly treats their American Worker as a second class citizen. In Japan it is illegal to practice those same work ethics that they are attempting to establish in the American Bridgestone Memberships.

I was raised to respect my piers, act responsibly to my community and to do the very best I could on whatever I did. So it is very hard for me to understand their lack of respect for their American laborer.

When Bridegstone came to each of us asking for help because we were not doing as well as the company needed to do. We all did our best. They asked me for one more tire everyday and to stay out on the floor and forego my clean-up time. Not only did I respond, so did each and every member of the URW. Not only did I give them the one more tire per day, I gave them three times what they asked for. Our production levels soared. We threw ourselves into our company believing that we all must succeed together in order to create a better way of life for all. The membership joined committees and we became involved, we gave them our hearts. We began to believe this company was different. We gave them our input to create a better working environment. To increase productivity we began to meet our production levels. We were proud of our company and our union. Together we did make a difference. It is these things that make me wonder why does Bridgestone now demand such unreasonable demands?

This is not an issue of money. It is an issue of work ethics, fairness to your employees, good working conditions, reasonable working hours and benefits.

You can not know how betrayed we American workers feel. You can not know the hours of fear and heartache we have indurred. You can not know how we fear for our safety when we are on the pickit lines. We are just average family people persuing a dream called the "American Dream."

Many of us in the plants have injuries that we have substained because of our employment at Bridgestone. Back injuries, muscle tearing, joint replacement, arm injuries, carpal tunnel, cancer and asbestosis these are just a few. Many of our brothers and sisters have died because of conditions at these types of companies. Many of us just can't get another job. Who would hire half a man or woman. We can't stand to lose our jobs. There is no place else to go! Many of us are unfit to work anywhere else. Where do you go to work when your arms hurt you so badly you finally have to have surgery. yet knowing full well you will never fully recover from the physical and mental abuse you have indurred. You know that the pain will never fully go away. Your physical abilities will never be the same. It is unconceivable that this company would throw you aside like a piece of used up machinery. But they did and still do!

Please do not let forty-six years of continued bargaining for better wages, vacations, working hours, working conditions, health benefits and retirement, everything a union stands for, be destroyed in one six month struggle with one foreign owned company end. Because in reality the Japanese owned Bridgestone tire manufacturer wants an economical advantage over the other American tire manufacturers that are doing fine with the same contracts we are striving for. In the process they will undermine those businesses causing a domino effect, which will undermine American economics. If this is let to happen the process will undermine those American businesses causing them to do the same thing this Japanese company is doing which in turn will undermine the American economy.

Where do you go to work when you have worked thirty-three years at Bridgestone? You are to young to retire and no one else wants you because you are too old for them. What do you do? There is no money coming in, no job, and no hope of a decent job. You lose your home, your car and sometimes through all the tears and frustration you lose your wife, and if your young enough, your children. What do you have left? You have even lost your self respect.

What about if both parents work at Bridgestone. The entire family becomes a disfunctional family. Even young children feel the pain. These are not scenearious, they are true life stories.

The Japanese tire companies in this country got together and became the unholy alliance. Their goal was to try and break the membership. They deliberately set out to undermine our contracts, our work ethics and to destroy our integrity. The other Japanese companies failed to accomplish their entire goals because they are small companies and could not economically continue to lose their cash flow. Bridgestone has several tire manufacturing plants in foreign countries. It is those plants that are supporting them now. The greatest concern I have is knowing that we are not the first union that will have this problem. There will be more union brothers and sister that will fall.

I am so perplexed—why hasn't our government seen the dangers and helped her people? Why doesn't our Congressman help? Why do not our leaders that we elected into office see that her American working middle class people need their help? What is it we have to do to get your help? Violence has already broken out. Have our congressmen forgotten why we elected them? There is a great need for a change in our laws. We need laws to protect our working citizens and to prohibit replacement workers. We need our Congress, governors and President to take off their blinders. Stop turning the other cheek. We need you now!

Please please help this kind of thing to never happen again. This is just a beginning of a big war with foreign owned businesses to continue to strip American workers of their dignity, their values and to undermine the American family.

Please restore my faith in our American Government! Let me see that our people still are important to you. Let me see that the little guy is still in your hearts and minds. Please help me keep the pride in my heart when I help my son study his American history. When we read about the famous ride of Paul Revere or of Ben Franklin the father of knowledge and George Washington the father of our country that the tears of pride and joy fall down my checks and when he sees them I can smile and tell him this great

nation and her great leadership is still that strong, determined, fair and brave people they were two-hundred years ago. Do not let him see the tears of pain that I now cry and the dispair I feel show in my eyes. You see, we are one of those families that both husband and wife work at Bridgestone/Firestore in Des Moines, Iowa. We both have lost our jobs, our benefits and our livelihood. We have had days and nights of no sleep, wondering where our life is heading. Trying to keep the "American Dream" alive with dignity, conviction to stand up for what you believe in and HOPE * * *.

Please hear our plead for help * * * Over 25,000 employees, spouses and children will be effected by this one American-Japanese incident. If this is not stopped, more heartache will follow. Please don't let us down! May God be with you.

Sincerely in hope,

SHERRIE WALLACE,
Bridgestone Tractor Tire Builder.

Mr. HARKIN. Mr. President, that is a letter from the heart. This is not a canned letter. That letter comes from the heart. I do not believe I know Sherrie Wallace personally, but I sure know a lot of people like her, and I know some of my cousins are in the same situation. It tears your heart out when you see them and when you talk to them. These are people who have given their lives—like I said, it is not as if they were shirking, it is not as if they were cutting down on productivity. In fact, the productivity at that Bridgestone/Firestone, as Sherrie Wallace has said in her letter, has gone up in the last couple of years.

The company they went to the State of Iowa in the 1980's and said, "We need some help, we need government help or we can't exist. We have all these workers here and, oh my gosh, we have to have government help."

Here is what they asked for: They asked for grants of $1 million from the State; $300,000 from Polk County; $100,000 from the city; $100,000 from Iowa Power; $50,000 from Midwest Gas. They asked for that in May 1987, and in June 1987, they received all the grants.

In July 1987, they got their $1 million from the State of Iowa. That same year, they went to the workers and said you have to take cuts or we cannot exist. So the workers took another $4 an hour cut in wages and benefits in 1987. So they asked the workers to produce more. In October 1993, the Des Moines Bridgestone/Firestone plant profit was $5 million ahead of their budget schedule. In March—get this now—1994, the workers reached a new high of 80.5 pounds per man-hour and set an all-time record for pounds that they had in the warehouse.

The company boasted that they did it with 600 fewer workers. So like Sherrie said, they came and they said build me an extra tire a day. They went out and built three extra tires a day. They asked them to take wage cuts. They did. They took wage cuts, actually in the latter part of the 1980's, totaling over $7.43 an hour. So they increased their work productivity, took their wage cuts, and Bridgestone/Firestone gets almost $1.5 million in grants from State and local governments.

And in March—this is important—of 1994 they reached this record production level, an all-time record for pounds warehoused. And guess when it was that Bridgestone/Firestone said they would not negotiate further and forced the workers out on strike? You got it, the summer of 1994. After they had pushed their workers, got the production up, got all this stuff warehoused, then they said: OK, now we are not going to bargain with you to reach an agreement.

I have said it before, and I will keep saying, I think Bridgestone/Firestone is perhaps the prime example of corporate irresponsibility and bad faith more than any company I have ever seen in this country.

Again, these are very hard-working people. Times are a little better. The company is making a good profit. Workers just want fair treatment. That is all they want.

What did President Clinton say in his Executive order? He said something very important to the workers at Bridgestone/Firestone. He said we are not going to continue to take your tax dollars and then use them in the Federal Government to buy from Bridgestone/Firestone those tires since they will not even negotiate in good faith with you.

I think that is the right decision. I am proud of President Clinton for making that decision. I think the workers who work at that plant ought to have the assurance of knowing that their dollars are not going to buy those tires for the Federal Government.

The President's action is entirely lawful, fully within his authority, and conforms with the practice of previous Republican Presidents in labor issues. President Bush issued Executive Order No. 12818 in October 1992 that prohibited prehire agreements in Federal contracting. These are collective bargaining agreements that set labor standards for construction work prior to the hiring of workers. Yet, I did not hear any of our colleagues on the other side of the aisle complaining then that President Bush had exceeded his authority. That's because he issued an Executive order that came down on the side of business, not on the side of workers.

President Bush also issued an Executive order to implement the Beck decision concerning the use of union funds for political purposes despite legislation that was then pending. At that time, Congressman DeLay, who is now the House Republican whip, said that Bush's action was, and I quote, "* * * * an effort by the President to do something through Executive order that he cannot get Congress to do."

What is sauce for the goose is sauce for the gander. When the Republicans controlled the White House and not the Congress, this kind of Presidential policy happened all the time. Back then, I did not hear a peep from our friends on the other side of the aisle concerned about a President stepping on the prerogatives of Congress. In fact, they applauded the action.

So, Mr. President, although I know it is allowed under the rules of the Senate this amendment is not in the best interests of the workers of our country. It is not in the best interests of our economy. It is not in the best interests of labor relations in this country. The President has the authority. He acted lawfully.

The fact is, we had the votes to pass the striker replacement bill last year. It passed the House. President Clinton said he would sign it. It came to the Senate. We debated it. We voted. We got 53 votes on a cloture motion, seven short of the number needed. But the majority of the Members of this body voted to pass the anti-striker-replacement bill. So it is not as if the President did something that Congress was totally opposed to. A majority of Congress supported that action.

This amendment is one I think we are going to have to talk about, and I do not think it is in the best interests of this country. I think we ought to reject it.

There are those, Mr. President, who might say that the workers at Bridgestone/Firestone have not been permanently replaced. I have a letter here from Gary Sullivan, and it is a copy of a letter that was sent to him by—I think the name is Lamar Edwards, labor relations manager for Bridgestone/Firestone. Here is what the letter says:

On January [and then it is handwritten in] 19, 1995, you did not report to work because you were on strike and you were permanently replaced. Please address any questions you have to the Labor Relations Office.

Not even "Sincerely," just "Lamar Edwards, Labor Relations Manager."

Gary Sullivan wrote me a note on this letter.

This is all I'm worth after 24 years of devoted and loyal service. Please continue to hang in there. We need your help. Gary Sullivan, Sr.

Not even so much as a thank you for 24 years. No thanks for increasing productivity, no thanks for taking the wage cuts you did in the 1970's to help get the company back on its feet. No thanks for your tax dollars that came from the State of Iowa or the county of Polk to give us grants to help get us back. No, nothing like that. Just out the door.

There are those who are saying these people have not been permanently replaced. Well, here is the letter. I ask unanimous consent that a copy of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

This is all I'm worth after 24 years of devoted and loyal service. Please continue to hang in there, we need your help.

P.S. I'll help you all I can on election day.

GARY R. SULLIVAN, Sr.

G.R. SULLIVAN,
Des Moines, IA:

On January 19, 1995 you did not report to work because you were on strike and you were permanently replaced.

Please address any questions you have to the Labor Relations Office.

LAMAR EDWARDS,
Labor Relations Manager.

Mr. KENNEDY. Will the Senator yield on that point?

Mr. HARKIN. I am delighted to yield to my colleague.

Mr. KENNEDY. Mr. President, I have been listening to the Senator from Iowa and I certainly hope my colleagues have paid attention to the last few moments of the Senator's presentation. I hope they listen to the whole presentation, but particularly the latter part of it highlights what this debate is really all about.

As I understand it—and I would appreciate the Senator correcting me—here was a person who had worked for a particular company over virtually a lifetime. The company was successful, and reaped large profits. This worker tried to enhance his own and his family's economic condition—trying to at least participate in the growing success of his company—by using the accepted, standard practice in this Nation since it has been a great industrial power, of joining with his colleagues to advance their economic interests and the interests of their children in a company that had been very successful. And he was virtually fired—although technically that is illegal under the National Labor Relations Act. But effectively, that person was thrown out of that job, terminated and permanently replaced, in terms of any chance for the future.

We are talking about hard-working families, people who are playing by the rules, people going to work, trying to educate their children, and effectively they are dismissed, put out on unemployment compensation and perhaps even onto the welfare rolls.

As I understand it, what this Executive order says is that we are not going to tolerate that. This President is not going to tolerate that kind of activity when it comes to Government contracting, where there is a Government contract which is effectively being paid for by the people's taxes. Under the Executive order we are not going to perpetuate that kind of injustice to workers who are being treated like that.

My understanding is, the order only applies if there is a legitimate strike—we are not talking about the termination of the contract. My understanding is further that it is only in these circumstances, as in the example the Senator from Iowa gave, where we have someone who has been a hard-working person, effectively replaced, thrown out of his job. And what this Executive order is saying is that we are not going to use American taxpayers' funds to encourage or support or perpetuate that kind of activity in the United States of America. When it comes to the taxpayers' funds, this President has a responsibility, and he is not going to continue to support or encourage that activity; he is saying: in those circumstances, we will not grant contracts to those kinds of companies.

Am I correct in understanding what the Senator's position on this is?

Mr. ABRAHAM assumed the chair.

Mr. HARKIN. The Senator from Massachusetts is absolutely right. He has distilled it down to its essential points.

It really says something. I do not know if the Senator was here when I was reading the history of Bridgestone/Firestone. They went to the State of Iowa and they got all this money, taxpayers' money, to build their plant up. Then they asked the workers to take all the cuts in wages. Now they are out on strike and replacing them.

It is all right for them to get taxpayers' money, I guess, in order to get their plant up and working. Then they go ahead and fire the very workers who paid those taxes. But it is not all right for us to say that taxpayer dollars are not going to be used to buy products made by a company that refused to bargain reasonably, that treated their loyal workers like used-up equipment.

Talk about a double standard. We are saying: Listen, Bridgestone/Firestone, you already had your hand in the till. You already took money before from the State government—I say, not the Federal, the State, county, and local government. Then you cannot be complaining now when we are saying we are not going to use taxpayers' dollars to enhance your position.

Mrs. KASSEBAUM. Mr. President, I wonder if the Senator from Iowa will yield for a moment, again?

Mr. HARKIN. Yes.

Mrs. KASSEBAUM. Mr. President, in response to the Senator from Massachusetts saying a family had worked a lifetime at Firestone, is it not correct to say that Firestone was going broke when it was purchased by Bridgestone? So the future of the workers at the old Firestone Co. was in some jeopardy at that time. Not to go into, again, a lengthy debate on the practices of Bridgestone, but, at the time the whole issue was not wages so much as hours. The Senator from Iowa has already discussed that. But they said they needed to do the shift in hours to cover capital costs.

When you mentioned what Iowa chipped in and asked the taxpayers to spend in support of Bridgestone. Was that not something that was debated, at least, in the Iowa Legislature? Or was it a decision made by the Governor, I suppose, on how much taxpayers' support would be given to Bridgestone at that time? It was not something that was done without some approval somewhere along the line, isn't that correct?

Mr. HARKIN. Absolutely. I think the legislature, I think Polk County, all agreed to give them these dollars, these grants.

Mrs. KASSEBAUM. So these very workers who were in jeopardy of losing their jobs because the company was going bankrupt now have at least had an opportunity, if they so chose to do so, to work for a company that is productive and is going strong.

Whether or not they should have done it by replacing striking workers, I would argue, is not what we should be debating here. I suggest to the Senator from Iowa, we can have this debate at another time.

But what we should be debating here is something that follows on just the past weeks and months of debate that we have had on the separation of powers regarding the Constitution. That is why I feel we ought to take seriously this Executive order.

I do not mean to intrude on the time of the Senator from Iowa, but I think that if you get into the particular situation of Bridgestone/Firestone it was not a question of long-time workers somehow being forced out in the cold. There was a great tragedy that Firestone was teetering on the edge of bankruptcy and was going under. But I would like to go back to the fundamental issue here, which really is the separation of powers.

I yield and thank the Senator from Iowa.

Mr. HARKIN. I would just respond by saying I do not know where the truth lies in this. But I would say to the Senator from Kansas, there is some evidence that the Bridgestone Corp. overbought. They overpaid for Firestone. As a result of that, they tried to get in a more competitive mode by doing the things that I mentioned.

For example, they asked the union members to take $7.43 an hour cuts, from 1985 to 1990.

They got their taxes reduced in the county in which they reside. They got the grants to get going again. And, as Sherrie Wallace said in her letter: We were willing to do that to save our jobs. They asked me to produce one more tire a day, I produced three more tires a day. As I pointed out, in March of last year they reached an all-time high for productivity. So the plant is making a lot more money. They are much more profitable. Yet, they are not sharing some of these profits with the workers. The workers took their cuts, I respond to my friend from Kansas, in the 1970's; big cuts. The taxpayers coughed up a lot of money to get this plant going and to help Bridgestone make it. They have now made it. No one—not even

Bridgestone—is claiming that they are not making good money now. They are making a lot of money. They are very profitable.

So instead of saying, OK, Mr. Sullivan. You have worked here for 24 years. You took a lot of cuts in the seventies. We got our plant going again. Instead of saying we are going to raise your wages a little bit, give you a little bit better deal, no. Take more cuts. Instead of working 8 hours a day, we will make you work 12 hours a day. That is what they are saying to them.

I again point out to my friend from Kansas that I have cousins working all over the place in the tire industry. I have a cousin who is one of the negotiators for Armstrong Tire, another tire company in Des Moines. They went out on strike. But they got back together and they sat down and negotiated. They reached an agreement. Goodyear did the same thing. They reached an agreement.

But then what this company has come in and done—that is why I talk about this kind of path the company is taking—is insidious because Bridgestone/Firestone is able to do this. They have put Goodyear and Armstrong and Dunlop at a competitive disadvantage. Goodyear acted in good faith. They went out and bargained. They reached agreements. They signed a contract. The Goodyear workers are happy. They are organized, union, and everybody seems to be happy with them. And Goodyear is making money. But now Bridgestone comes in and undercuts them with this kind of depressing of wages and getting rid of longtime workers. What is Goodyear going to do? What are they going to do? They say, well, they have to answer to their shareholders, too. That is what is so insidious about this.

Mrs. KASSEBAUM. Mr. President, I say to the Senator from Iowa that I cannot disagree with what he is saying. But then, would you turn right around and say that the President of the United States should enter into and completely change the dynamics by intervention? I think what we are debating about is what authority the President has to tilt the balance of what we really have felt was a balance. And I am sympathetic with what the Senator from Iowa is pointing out; that Goodyear worked it out and they did not at Bridgestone. But I argue that through this Executive order we now find the President completely intruding in a labor-management relationship. If we find legislation to decide to do so and have that debate and vote, that is a different matter. But I think the Senator from Iowa certainly recognizes that we have some question about what is in the Constitution and the separation of powers between the executive and the legislative branches.

As much as I am sympathetic with the argument that the Senator from Iowa is pointing out, the argument I would want to make on this amendment is the way we are trying to intrude on law that does exist. That is my point. I think the case made is one that obviously resonates, but this is the wrong way to handle it.

Mr. HARKIN. Mr. President, again the Senator was here in 1992 when President Bush issued Executive Order No. 12818, October 1992, that prohibits prehire agreements in Federal contracts. These are collective bargaining agreements that set labor standards for construction work prior to the hiring of workers. Again, this is labor-management. Yet, we interfered. Maybe the Senator did speak out against that at that time. I do not remember.

Mrs. KASSEBAUM. Mr. President, did the Senator from Iowa speak out against it?

Mr. HARKIN. No. Because there are times when a President can, in fact, issue Executive orders. I am not speaking out against this one either.

Mrs. KASSEBAUM. Mr. President, let me suggest to the Senator from Iowa, that there were those who questioned the legality of the prehire Executive order, but never challenged it in the courts. While it was a bit questionable in my mind, I did not challenge it.

But I think in this case we have a situation where Congress has addressed striker replacements the past two Congresses, and labor law matters generally for over 60 years. We can argue whether President Bush's prehire contract Executive order should have been challenged. That is debatable. As the Senator says, he did not challenge it because he agreed with it. I would suggest President Bush's prehire contract Executive order has worked successfully. In all honesty, Mr. President, I probably did not think about it much at the time. But I suggest that this Executive order goes even further. That is my concern.

Mr. HARKIN. Again, I appreciate the frankness of the Senator from Kansas. To be honest, I did not know about it myself. I am saying that these things take place by a President. Quite frankly, they have a right to do so in these kinds of situations.

It just seems to me that President Bush issued this Executive order, the one on the Beck decision, and the whip on the House side said that a President will do something by Executive order that he cannot get Congress to do. This is the same thing here, although in another way Congress wants to do something about striker replacement. The House passed it last year. The Senate voted 57 votes. It is only because of the filibuster rule that we were unable to pass it and get it down to the President for his signature.

So again, I say to the Senator from Kansas that I think we have every right for the President to do this. It is perfectly lawful. But this is not really the place for this amendment. We are on the supplemental appropriations bill. This is not the place for this kind of an amendment.

Again, Mr. President, I close my remarks by saying that we just cannot continue to use taxpayer dollars to subsidize—that is exactly what it is any way you cut it—companies that say to those same taxpayers I do not care how long you have worked here, and I do not care if you are exercising your legal rights, we do not care. We are going to permanently replace you. Well, I think it is time for us to say that we are not going to subsidize them anymore. That is exactly what we have been doing. That is what President Clinton's Executive order does. I wholeheartedly support it. I think it is a step in the right direction and a courageous decision by the President.

I am going to do everything in my power as a U.S. Senator, regardless of how long I have to stand here, how many days it takes, to make sure that Executive order can go forward and this amendment is defeated.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank our friend and colleague for his excellent presentation on this issue and for the focus that he has brought to this issue. The fact of the matter is that the President is entitled to make these judgments. In terms of his contracting authority, the President is charged with oversight of billions and billions of dollars. The President has the responsibility to be sure that we are going to get a dollar's worth for the dollar expended.

What basically is at risk here is quality. The fact is, that when you have replacement workers, and you have individuals who do not have the appropriate training, who do not have the necessary skills, who do not have the ability, you are putting at serious risk the results and the quality of the purchases. We have seen that time in and time out. One of the great authorities on this is a fellow named John Dunlop, who is not a Democrat, he is a Republican. But when the issue comes down to being sure that we are going to have decent wages for skilled workers, he comes down against the permanent replacement of strikers because he knows that it is not just the dollars and cents of a particular wage, but about the competency of the individual, the skills they have, and the oversight of their performances. The President has the responsibility and he is exercising it. He is making a judgment that these replacement workers may be individuals who do not have the skills or the background to do the job, and as a result the Federal Government's investment is threatened.

So I believe that the President has taken wise, sound action. I must say,

as I was listening to the Senator from Iowa make his presentation, I was thinking back on the testimony of Cynthia Zavala, who testified in March 1993 before our committee. It is a similar story to the story recounted by the Senator from Iowa. Here is what she said:

I live in Stockton, CA. I am 52 years old and I have four children, 11 grandchildren, and 1 great grandchild. I have been employed at Diamond Walnut Processing Plant in Stockton for 24 years, starting in 1961, with several breaks when I had my children. During my years with the company, I worked my way up to cannery supervisor. My husband also worked for Diamond for 33 years.

So they have 57 years between them.

I have always worked hard for the company. They called me "Roadrunner" because I always moved so fast. Everybody in the plant always worked hard. We felt a lot of pride in our work. We took a personal interest in the products. That is why, in 1985, when the managers came to us and said the company was in trouble, we agreed to cut our own pay to help save our company. It was hard for us. People who had been with the company for 20, 30 years would have to go back to what they earned maybe 10 years ago. Most of us only got between $5 and $10 an hour. We had responsibilities and families to think about.

Well, we felt that Diamond Walnut was our family, too. The managers said if we stuck by them, they would stick by us. Some people ended up taking pay cuts as high as 40 percent. After those cuts, we worked even harder; production levels were up. This allowed us to double our productivity and cut the work force in half, from 1,200 to 600, at the same time.

In 1990, I was picked to be employee of the year, along with another supervisor. I felt like the award was really for the whole department. We broke the production record on the line that year. Our hard work paid off for Diamond Walnut. The next year, the net sales reached an all-time high, $171 million. The growers' return on their investment was 30 percent.

Our contract was up for renegotiation, and we felt sure the company would be ready to repay us for our sacrifices and hard work. Instead, the company wanted to cut our pay even more. They offered a small hourly increase of 10 cents, but they were going to turn right around and take twice that away by making us pay $30 a month for our health coverage. The managers started coming to the production line and brought young men from the outside with them. They wanted to know how we did our work, how they could watch, but they weren't allowed to touch the machines.

We knew they were getting ready to replace us. We would go home sometimes at the end of the day and cry because they were forcing us to train the people who were going to take away our jobs. We tried to get the company to be fair. We knew our lower-paid people were just getting by. We were down to $5, $6 for full time. Seasonal workers were getting $4.25 an hour with no health benefits. We knew we could not take another pay cut, but the company said, "Take it or leave it."

We had never gone on strike before and we had been in the union almost 40 years. We felt the company gave us no other choice, so we went out. The next year, the company put the scabs to work on the line. The long-time, loyal workers—75 percent of us women and minorities—ended up on the picket line fighting for our jobs. That was September 4, 1991, 18½ months ago. We are still trying to get our jobs back. They told us we were not wanted. Their loyalty is to the replacement workers.

We still can't believe this happened to us. We thought we had the right to strike to defend ourselves from being exploited by the company. As the months go by, many strikers are losing their homes, their cars, and are getting behind in their bills. Some of us could not afford to pay for insurance, so we have had to skip going to the doctor and hope we wouldn't get sick. Two weeks ago, one of our workers died, without health insurance. We try to cheer each other up. We work toward the day we get our jobs back. We hold prayer meetings on the picket line every Tuesday.

While we are struggling to get the jobs back, the U.S. Agriculture Department has given Diamond millions of dollars in subsidies to help the company sell more of its product in Europe. Diamond now sells 40 percent of its walnuts in Europe. The people I talked to were shocked about what Diamond Walnut has done. When I told them the U.S. Government has allowed the company to hire permanent replacements, they didn't believe me and made me repeat the whole story.

The union has been working very hard to help us but we need our Government to help us, too. If the law says we have the right to strike without being punished, then how can Diamond Walnut get away with replacing us? I have dedicated 24 years of my life to Diamond Walnut. I will work hard for the company when I get my job back. I believe in our country, in justice and, most of all, I believe in God. I believe that Congress and President Clinton will do the right thing this year.

By God, he has done the right thing this year. He has done the right thing. He is saying that we are not going to provide those additional funds for Diamond to go ahead and expand their product overseas, while at the same time holding these hardworking Americans by their necks and denying them the opportunity to even be able to go into negotiations and collective bargaining. That is what we are talking about here.

That is why I am amazed that this is the first issue to come before the Senate in this Congress that concerns working families. Instead of trying to help them, we are talking about further disadvantaging people making $5 or $10 an hour. We are talking about the "Cynthia Zavalas."

Why are we having this debate now? Why are we delaying the important appropriations necessary for our national security in order to shortchange Cynthia Zavala? That is what I am wondering. That is what I am wondering. It is wrong. We are just talking about the condition of working families.

I will be participating in a forum tomorrow morning on the proposed increase in the minimum wage. We are not out here this afternoon offering an amendment to increase the minimum wage. But tomorrow, we are going to provide an opportunity for some individuals to speak to us about the needs of people like Cynthia Zavala, whom I just talked about here.

We are going to hear from Barbara and Bill Malinowski, owners of the Yum-Yum Donut Shop in Waynesburg, PA. A former mineworker who lost his job when U.S. Steel closed down the mine, Bill and his wife Barbara bought a doughnut shop which now employs 14 people. As small-business employers, they support an increase in the minimum wage.

We are going to hear from a small businessman and woman who lost their jobs. They lost their jobs. We are talking about people trying to make it in America, who are playing by the rules, and they want to work. This issue is about working. We are talking about protection of workers' rights—not about people who don't want to work. When we talk today about workers' rights, I am reminded that we are not even talking about giving working families in America a livable wage. That is not the issue before the Senate. That is not the issue in the Contract With America. That is not here. We are talking about taking away protections for workers like Cynthia Zavala.

The Executive order does not promise Cynthia Zavala her job back, but it says that we are not going to see the Department of Agriculture use millions of dollars of taxpayers' funds that come from my State that represent the toil of workers in my State to go out and help this company shortchange Cynthia, slam the door on Cynthia. Fifty-seven years your family has given to that company and they have slammed the door on you. All we are saying is they are not going to get another bonus. But now we have an amendment on the floor of the U.S. Senate to stop that simple act of justice.

At tomorrow's forum, Americans will also have a chance to hear from Barbara and Bill Malinowski. Bill is a former mineworker who lost his job, but now he employs 14 others and, as a small employer, supports increasing in the minimum wage.

We'll hear from Nancy Carter, from Monaco, PA, in Beaver County, near Pittsburgh. Mrs. Carter's husband has had little success finding work after losing his job of 27 years in 1979, when the St. Joseph's Mineral Co. shut down. The family has been on and off unemployment and welfare as they struggle to find work. Their adult children help support the family at jobs at $4.50, $5, and $5.50 an hour.

These are the kind of working Americans we are talking about. With all the other kinds of problems and challenges that we face in this country, our friends across the aisle want to pass legislation to diminish the rights of workers.

David Dow, a pizza shop worker and parent, from Southfork, PA, near Johnstown. David and his wife work at low-wage jobs, staggering shifts to accommodate child care needs of their

two children. They are trying to make it, working at low-wage jobs, staggering their shifts to accommodate child care. And now in furtherance of the Contract With America, the House has voted to diminish child care support.

We will have a chance to hear David Dow tell us how he is going to have to look harder for child care if this budget goes through. And if you strike to increase your wages, you are going to get replaced and you may lose your job.

We will hear from Tonya Outlaw, a child care center worker at Kiddie World Day Care, Windsor, NC. Ms. Outlaw is a single mother of two who quit an above-minimum-wage job because she could not afford child care. She is allowed to bring her children with her to her current minimum wage job as a child care center worker.

This is what is really happening in America.

We will hear from Alice Ballance, the owner of Kiddie World Child Development Center, Windsor, NC. Ms. Ballance owns licensed day care centers in rural North Carolina, primarily serving low-income working families. She pays minimum wage but supports an increase.

We will hear from Keith Mahone, a contracted custodial worker from Baltimore, MD. Mr. Mahone, a single father with joint custody of his daughter, is employed at minimum wage cleaning school buildings for a Baltimore city contractor. He is a founding member of an organization which lobbied for the Baltimore living wage law. Effective July 1995, employers under contract with the city must pay their employees a livable wage.

And we will hear from Robert Curry, a small business owner, from Braintree, MA. Mr. Curry employs 60 workers at several hardware stores in the South Shore area of Massachusetts. He supports an increase.

These are examples, Mr. President, of what is happening out there in the work force. We are in the Senate talking about the technicalities of an Executive order, whether the President has the power to issue an Executive order. Well, I believe he absolutely does. That can be contested and it will be contested. I am sure there are many political leaders who would like to contest it and embarrass a President who is trying to provide some degree of protection to working Americans.

And, my God, they need that protection. They need that protection, as they have seen the minimum wage effectively disappear in value over the last several years. These are real families, real workers, people trying to play by the rules, people who want to work to provide for their families, who want to make sure their kids can get a hot lunch at the school; or maybe that their teenage child can get a summer job because it is so difficult to find employment; or maybe their older child, who has been able to make it as a gifted, talented, motivated young person, can attend a good State college.

Is that difficult? Increasingly so. In my own State of Massachusetts, it is more and more difficult for students to attend college.

Mr. President, the larger issue we face, an issue clearly illustrated by this debate, is the issue of whether we in Congress are on the side of the working families across the country, or on the side of the wealthy and powerful.

The amendment before us would put the Senate squarely on the side of the wealthy and powerful corporations and against working men and women exercising their legal right to strike. This is a clear example of the brazen Republican attempts to tilt the balance of labor-management relations in favor of business and against the workers of America.

But this amendment is far from the only example of that kind of bias against working families. In fact, as the Republican Contract With America comes into sharper focus, it is becoming increasingly clear that the first 100 days of this Congress are turning into a 100-day Republican reign of terror against working men and women, against the elderly, and against children in need.

I would like to take just a few moments to cite some of the examples of the harsh approach that our Republican colleagues seem bent on taking.

The House Republicans are not only intent on slashing funds for low-income Americans, they also want to rob them of any opportunity to improve their lives. The rescission package eliminates the funding for the summer jobs program for 1995 and for 1996, too; 1.2 million young Americans from the Nation's neediest areas will be without jobs this summer because of those Republican cuts. In Massachusetts, 30,000 young men and women who were to participate in the summer jobs program over the next two summers will have to look elsewhere for employment.

The summer jobs program is more than just a paycheck. It offers an opportunity to learn the work ethic, acquire real job skills and training, and gain a sense of accomplishment. Why would anyone deny young people that opportunity?

Republicans are not only attacking the poor, they are also assaulting the Nation's cities. The Democratic and Republican mayors of America's largest cities have come out strongly against the elimination of the summer jobs program. They know firsthand how important it is to their local economy because it provides a practical way for private-sector firms to create jobs for low-income men and women.

In my own city of Boston, private sector companies meld their programs with the public service and the summer jobs program. They take young people the first year they work in a summer jobs program, and they bring them under programs developed by the mayor in conjunction with the private sector. Then they search out promising young people in the second or third year of the program and put them in line for a good job with one of several corporations in the Greater Boston area.

This is one of the extraordinary examples of the public and private sectors working together in an effective and efficient summer jobs program. And there are other cities in my Commonwealth that have similar efforts.

Victor Ashe, the Republican mayor of Knoxville and president of the U.S. Conference of Mayors, recently contacted Speaker NEWT GINGRICH and urged him to restore funding for the summer jobs program. Republican Mayor Tom Murphy of Pittsburgh has emphasized that this program would employ 8,000 young men and women this summer in his city to tutor youngsters, assist in food pantries and soup kitchens, rehabilitate housing, and learn the value of community service programs.

Mayor Richard Daley of Chicago said, "The summer jobs program truly makes a difference in our lives, and without these jobs, more young people will fall prey to drugs, costing society even more down the road."

Ask any prosecutor in any major urban area about the value of a summer jobs program as crime prevention. Ask any police officer working on the problems of gangs and violence in local communities and they will talk about the value of the summer jobs program.

This program was developed in the wake of the riots in California. Now perhaps we must relearn the lessons of our time with the cancellation of these programs.

Boston Mayor Tom Menino declared the Republicans' misplaced budget priorities will be billions for prisons, zero for summer jobs, and opportunities. If the Republicans are serious about work, they should begin by restoring funding for the summer jobs program. Perhaps they intend to put these young Americans to work in the orphanages or the prisons they are planning to build.

The House Republican plan also includes drastic cuts in the School Lunch Program, and in nutrition programs for women, infants, and children. As many of my colleagues have stated, the famous cry of "women and children first," is gaining a new, more sinister meaning. Women and children are the first to go hungry, the first to suffer, and the programs that serve them are the first to be cut.

Among the programs under attack are the School Lunch Program, which feeds 25 million children every day with a hot meal; the School Breakfast

Program which feeds 6 million children a day; the WIC Program, which provides food to 5 million women, infants, and children every year, more than 3 million of them children under the age of 5, including about 2 million infants; and the Child Care Feeding Program which provides food to millions of children in child care every day.

These are programs being cut. These are the sons and daughters of the working parents who need the protection that this Executive order provides. Even worse, the Republican plan also lumps into the same block grant program the programs that feed senior citizens, to provide summer meals for schoolchildren, and special supplement nutrition programs for women and infants.

One of the principal criticisms of the feeding programs, the school-based programs, is that they stop in the summer. We have seen efforts to provide continuing services through the summer, so that we can try to make sure that we can adequately support these children. But now we move backward.

This is all against the background of a Carnegie Commission report just a few months ago that talked about the permanent effects in terms of brain development and behavioral patterns of children, over 1 year and under 3 years of age who do not have adequate nutrition.

We talk about the challenges that exist for children in schools today. If we do not provide adequate nutrition for children between 1 and 3, we are permanently damaging the ability of those children to develop their cognitive skills and social skills to survive in a complex, difficult, challenging place called school.

With the Carnegie report, we have just had that evidence presented again by thoughtful men and women, Republicans and Democrats, people who have spent the last 2 years studying this problem. Nonetheless, we see not an expansion of programs targeted toward those children; we see a cutback.

We will hear the answer, "We are consolidating these programs." Everyone is for consolidation. Many are for consolidation. We were hearing testimony just the other day about what consolidation is going to mean.

According to the General Accounting Office, we are talking about at most 5 percent. Maybe 5 percent. We are expecting the States to pick up that 5 percent. Come to Massachusetts. Come to Massachusetts, and I will show you where it is not being picked up.

My colleagues say on the floor of the Senate that those Governors will pick up the slack. But they are not doing it. They are not doing it. And the cutbacks in work-study programs, for example, affect 70,000 sons and daughters of working families in my State of Massachusetts. The State is not helping these sons and daughters of working families. Instead, working families are paying higher fees and tuition to go to school in my State. That is the rule, not the exception.

The health needs of the elderly and the poor will be severely cut back as well. I noticed the other day that as we talk about these working families and their children, we have not even begun to talk about cutbacks in chapter 1, which is the program directed toward the neediest children.

We also ought to talk a little bit about what will happen to the parents of these working families. Child care is being cut back, food programs are being cut back, job opportunities are being cut back.

If these families live in a colder climate, they face cutbacks in energy assistance. This program helps needy, primarily elderly, seniors who would like to retain the dignity of living in their own homes rather than being dependent upon other members of the family, or selling their homes and going to a nursing home, but need some help and assistance with the fuel oil. That program is being cut.

Then we have the chairman of the Finance Committee who has talked about $400 billion in cuts in Medicare and Medicaid over the next 7 years. Cuts of that magnitude will threaten the various academic health centers, the hospitals serving the poor, the other health facilities that are dependent on Medicare and Medicaid. We had the opportunity just a few years ago on the Nunn-Domenici amendment to cap Medicare-Medicaid. It only failed by five or six votes at that time. We almost passed that. It sounded like a pretty good way to cut Government spending. But we know what would happen. We would shift it right back to the States, they would shift it right to the private sector, and they would shift it back to working families who cannot afford it. And we move further away from any sensible health care policy.

So we are talking about our seniors. Our Republican friends propose to block grant health funds in a way that would eliminate the Federal commitment to early detection and screening of breast and cervical cancer. That is an issue that our committee has been working on.

So, Mr. President, I would just advise seniors and others who have incurred higher and higher out-of-pocket medical expenses to keep a very close eye on what happens here in terms of Medicare.

They should also keep an eye on how any Medicare savings are spent. Are they going to finance a cut in the capital gains tax.

We have already heard discussed in our budget committees the path that will lead to significant cuts for the Medicare. I supported the President's program last year that would have included some tightening in terms of Medicare, targeted not just on recipients but also on providers. But those cuts financed important benefits: prescription drug benefits for our seniors, community-based care, home care for our senior citizens. That plan was an effort to take scarce resources in our health care system to make sure they are going to be utilized more efficiently, more effectively, more humanely, and more sensibly.

I listened to my good friend, HARRY REID, today talk about health care. I want to assure him that just because we have not been debating it on the floor of the Senate yet does not mean we are not going to have an opportunity to do so later in this session.

It is not my purpose this afternoon to get back into the reasons for the failure of the health care bill. But hopefully that process can lead to a new bipartisan effort. On the first day of this Congress, Senator DASCHLE introduced S. 7 as a vehicle to explore common ground. It begins to identify the areas where there has been broad bipartisan support for health care reform.

Health care is not even a part of the Contract With America, not even mentioned in the Contract With America, not even referenced in there. But the problem has not disappeared. More and more people are not covered, more and more people are being squeezed, more and more children are failing to get the care they need. The problem is not diminishing, the problem is growing. We need to focus on that issue. We cannot afford to put that matter to the side.

Mr. President, I will come back later to some of the other examples of callous policies being pursued by the new Republican majority. I see my colleague and friend from Illinois here. I just want to say in summation that I am just amazed as we gather here in the early part of March that this is the issue before us. After spending a number of weeks on the issue of the unfunded mandates, which is an enormously important issue, and after several weeks on the enormously important question of amending our Constitution, now we have an emergency measure before the Congress which the Secretary of Defense says we need in a timely way, and yet the matter we are now debating is an amendment to diminish the protections for working families in this country.

It is important as we are having this debate to ask: What has the Congress been doing with regard to working families during the period of the past weeks? What have they been doing? It is important for American families to understand what Congress has been doing. Sure, it is reported this way or that way that we are trying to cut this kind of program to squeeze out administrative costs. Most families are too busy trying to make a nickel to really follow in great detail the path that is

being followed in the House of Representatives and in the Senate of the United States.

I have tried in a brief manner, and will continue to do so, to give them some idea of what is happening. Is the measure before us this afternoon going to enhance working families, the families that are hard pressed, the families that are being held back, held down, whose incomes are static, who do not participate in the expanding profits of major companies? Is that the matter we are talking about in this new Congress, how we are going to do something for those families and give them more help, give them more hope, give them a greater future, give their children a greater future? Is that what we are talking about here on the floor of the U.S. Senate this afternoon? Of course not. Tragically we are not. I should not say "of course not," but we are not. We are not. The echo of the proposal that is before the U.S. Senate is not one that is going to resonate in families tonight and lead parents to say, "All right, it might not help me, but at least it is going to help my children."

"It might not help me, but it is going to help one of my children get a job this summer."

"It is not going to help me, but maybe it is going to help my daughter get a better education."

That is not the message. It is not a message that says, "It is not going to do much for me and my family, but for my parents, who worked hard over their lifetime, it is going to mean a little greater hope for them." That is not the message.

What is it saying to all those I mentioned earlier, what it is saying to Cynthia Zavalas, a person just about making minimum wage as part of a family that has worked 57 years in a company? It is saying: You have been permanently replaced, effectively fired, and we are not going to help.

The Executive order will not get her job back, but it says that we are not going to give an additional financial reward to the company that has treated her poorly. That is what we are saying. And it is just because of that simple concept that this measure involving our national security is being delayed.

I am always amazed around here about how we spend our time and what we spend our time fighting for or fighting against. This is one of the examples that really takes the cake.

Mr. President, I see my colleague and friend, and others, on the floor. I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER (Mr. GREGG). The Senator from Washington.

Mr. GORTON. Mr. President, I have come over here to the floor this afternoon believing that the subject was the President's almost certainly unlawful Executive order with respect to striking replacements. I have not understood the debate was going to be on the entire panoply of social programs piled up over the course of the last 20 or 30 or 40 years on the backs of the people of the United States. But I think comments on those programs do deserve at least a certain degree of response.

Last week, many of the most eloquent proponents of a wide range of social and cultural programs voted to reject the constitutional amendment requiring a balanced budget. Many of them, at least, on the grounds that it should be the Congress itself which provides the necessary discipline to protect future generations from the consequences of our propensity to run up huge unpaid debts. And yet when it comes to any criticism, any reduction in even the growth rate of dozens, perhaps hundreds, of those programs, the proponents of fiscal responsibility are denounced as uncaring and indifferent to the needs of the American people.

Perhaps that argument would carry some weight if the growth of those programs had been accompanied by greater opportunities, a higher degree of family stability, more unity—in other words, had been accompanied by some demonstrable success as a result of all of those spending programs.

Of course, the contrary is true. During exactly the period of time during which there have been growing social and economic challenges to this country, deterioration of the society of this country has accompanied the growth of those programs hand in hand.

That does not prove in and of itself a cause and effect relationship, Mr. President, but it certainly makes dubious the proposition so eloquently presented here by the Senator from Massachusetts. The real burden which we have imposed on the people of the United States is the burden of debt, a burden which day after day, week after week, month after month, constricts our ability to provide jobs and opportunities for the people of this country.

We need a change in direction, and the debate here today, as it was last week and the week before, is paradoxically between those who over the years have been known as conservatives but who now believe that radical changes are necessary for this country, and those who have led the drive for all of these social programs, these spending programs, one piled on top of another, who are now so intensely conservative that we hear from them no desire for any change whatsoever, save perhaps to spend more money on programs which have not worked in the past.

The true proponents of the status quo are those who constantly fight against any change in our spending priorities whatsoever, who ask for more of the very programs which have been associated with a decline not just in our society and our economy but even our civility.

I am firmly convinced, Mr. President, that we need a new way, a new direction. The failure to take that new direction, that new road last week has been accompanied in the last week by a substantial loss in the value of our currency, the dollar, a substantial loss in confidence in nations and among people overseas in our seriousness in the retention of our leadership. If we cannot pass a constitutional amendment for a balanced budget, at least we have to be willing to do something about out-of-control spending programs even though we are almost certain to be criticized, no matter how small the changes in our priorities, as being somehow or another unfeeling. We are not unfeeling, Mr. President. It is our set of policies that will provide true opportunity for the people of the country in the future.

And now to the amendment proposed by my distinguished colleague and seatmate, the Senator from Kansas [Mrs. KASSEBAUM].

I believe that, as important as the issue of striker replacement is, the issue of who can make such rules under our constitutional system is even more important. This debate is not so much over the merits or lack of merits of striker replacement as it is over the wrong, and I believe almost certainly unlawful, action of the President of the United States to attempt to impose by fiat, by dictate, a policy which has been rejected explicitly in a long series of debates by the Congress of the United States.

This action, Mr. President, is without precedent. This action is clearly in defiance of laws relating to labor/management relationships dating back some 60 years, expressly interpreted and approved by the Supreme Court of the United States, and debated in each of the last several Congresses without change. And yet, in spite of this statutory history, in spite of this judicial history, in spite of this political history, the President of the United States purports to change those rules. When his action is challenged, Mr. President, I am convinced that it will be overturned by the courts as entirely unlawful and beyond his authority.

However, we should not wait passively, without reaction, to have the constitutional separation of powers be upheld by the courts of the United States. We should take that action ourselves. We should take that action ourselves, whatever our views on the merits of striker replacement, but simply to protect the rights and the duties of the elected representatives of the people of the United States to make fundamental determinations about statutory policies with respect to labor-management relations.

That is the issue, Mr. President, with respect to the Kassebaum amendment.

And it is for that reason that all Members of this body who care about the Constitution and the laws and about the separation of powers should vote for this amendment, whatever their views on the merits of the underlying policy itself.

I am convinced that the Senator from Kansas should be commended. She has a special responsibility as the chairman of the Senate Committee on Labor. She is carrying out her duties under difficult circumstances, knowing that the issue itself is a contentious one, but she by this action has reminded us of our duties which we should now undertake to perform.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to congratulate and compliment my colleague, Senator KASSEBAUM, from Kansas, for her amendment. I think it is regrettable that her amendment is necessary.

I heard one of my colleagues say is this not terrible that here the Republicans are and they have this amendment—this is an antiworker amendment. I totally disagree. This amendment is necessary because of an Executive order by the President of the United States to circumvent Congress and circumvent the U.S. Supreme Court. Congress has clearly stated its will or its desire to keep the law to where employers have the right to hire replacement workers. This President—and the Vice President, I might mention, because I caught part of his speech that he made to the leadership of the AFL-CIO in a speech in Florida—wants to overturn that by Executive order. They want to change law by Executive order.

The President of the United States is President, but he is not king, and he cannot pass law by Executive order. I totally agree with my friend, Senator GORTON, from Washington, who said this Executive order will be determined unconstitutional. It clearly will. It is not a valid Executive order. It will not stand the test of time. It will not stand up in a test in court. Clearly it is the President exceeding his Presidential authority and power, and it is a flagrant abuse of power.

I am reading this Executive order. If my colleagues have not seen it, I would encourage them to read it. Just looking at the Executive order—this is dated March 8—it talks about, in the first paragraph:

> The * * * Government must assist the entities with which it has contractual relations to develop stable relationships with their employees.

Why is that a Federal Government responsibility? It says the Federal Government "must." According to the President's Executive order, they will be forced to.

It goes on to say:

> All discretion under this Executive order shall be exercised consistent with this policy.

"All discretion."

> The Secretary of Labor may investigate an organizational unit of a Federal contractor to determine whether the unit has permanently replaced lawfully striking workers. Such investigation shall be conducted in accordance with procedures established by the Secretary.

We are going to give the Secretary of Labor great latitude to investigate something that he might determine is illegal and, if he so determines, then he can bar them from any Federal contracts.

Let us just take as an example, let us say, a defense contractor. Maybe they are working on building a nuclear aircraft carrier or fighter aircraft planes, the F-16 or F-14 or something along that line. Maybe there is a division within their unit that is having a strike, and that employer has a contract with the U.S. Government to produce those planes on time or to make this part on time so they can stay on time and on schedule and not be overpriced.

You could have the Secretary of Labor determine: Wait a minute, this is a violation. Therefore, you are going to lose this contract.

What if they are 70 percent through with the contract? We are going to get a new contractor to come in and finish the aircraft carrier? We are going to have a new contractor come in and try to pick up with the delivery on the F-16? I do not think so.

Talk about discretion for the Secretary. I was wondering how this section 11 of this Executive order—it says:

> The meaning of the term "organizational unit of a Federal contractor" as used in this order shall be defined in regulations that shall be issued by the Secretary of Labor, in consultation with the affected agencies. This order shall apply only to contracts—

And on and on. So they are going to give the Secretary of Labor total discretion to determine whatever organizational unit might apply. If they have a strike and they hire permanent replacement workers, then they are totally banned or barred from Federal work.

How much would that cost the Federal Government, if you disrupt a contract right in the middle of procuring a particular product or completing a contract? It could cost a lot of money.

Talk about caving in to a special interest group—and I do not say caving in to organized labor, I say caving in to leadership of organized labor. This is not a benefit to benefit labor. This is a benefit to say the Federal Government, under this administration, thinks they should be involved in labor-management disputes.

I heard my colleague say this is not about the underlying issue. One should vote for the Kassebaum amendment regardless of how they feel about striker replacement. I agree with that statement, because clearly the President has exceeded his authority, both against the will of Congress and against previous court rulings.

On the underlying issue the President is wrong as well. Individuals certainly should have the right to organize. They have the right to strike. If they do not want to work, they should not have to work. But, likewise, an employer has to have the right to hire permanent replacement workers to keep the doors open, to keep the plant running, to make the contracts, to meet the schedules, to be on budget or under budget.

Then this President's Executive order says: No, if you hire permanent replacement workers, you are going to lose any Federal contracts, you are going to be debarred, you will not be able to do Federal contracting.

This is an outrageous power grab, and it will not stand the test of time. It should not stand. I hope my friends and colleagues will support Senator KASSEBAUM in her amendment. She happens to be right. I wish it was not necessary.

I might mention, after the President made mention of his Executive order, we wrote the President a letter and said by what authority do you do this? The President does not have the authority to do this. The President does not have the authority to do by Executive order a statutory change, to change the law. Yet that is exactly what he is trying to do. His efforts will not succeed. They should not succeed.

I encourage my colleagues to support the Senator from Kansas in this amendment, and I hope it will prevail.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I wonder if I might ask for unanimous consent to speak for 5 minutes as though in morning business so as not to interrupt this debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE DUCK HUNTING SEASON IN MINNESOTA

Mr. WELLSTONE. Mr. President, this is an announcement I want to make on the floor of the Senate that is certainly important to my State of Minnesota. Today, the Governmental Affairs Committee, consistent with a request that I made 2 weeks ago, corrected an error in the regulatory moratorium bill, that is S. 219, in order to protect the 1995 migratory bird hunting season. I am delighted that my colleagues, Democrats and Republicans alike, responded to the concerns of thousands and thousands of people who participate in the bird hunting season in Minnesota.

When I learned that a provision in the regulatory moratorium bill threatened the 1995 bird hunting season, I asked my colleagues on the Senate

Governmental Affairs Committee to correct the bill. I also introduced a piece of legislation to protect the 1995 hunting season from the moratorium provision. I am delighted to report to the people of Minnesota that the committee took the time to remedy the problem so that Minnesotans can enjoy this cherished annual event. I owe a special debt of gratitude to Senator GLENN and Senator PRYOR for their work on the committee.

Mr. President, in our rush to reform the regulatory process we almost canceled a tradition for this year. Some of my colleagues criticized my efforts to correct the language in the bill. They claimed I was using scare tactics, that this was some kind of political magic show. But now, by correcting this legislation, the committee has made clear that there was an error in the original bill, an error that was overlooked and then vehemently denied for the sake of trying to rush through the Contract With America. Sometimes haste makes waste.

Last week one of my colleagues, a cosponsor of the bill, said that the language in S. 219 exempted the annual bird hunting rulemaking from the moratorium. Perhaps we should note that my colleague was from a Southern State—which from my point of view is fine because I love the South and grew up, part of my early years, in North Carolina. But the normal duck hunting season opens later in the South—I know my colleague from Oklahoma knows this —than it does in Minnesota.

And if the Fish and Wildlife Services' estimated best case scenario proved correct, the original S. 219 would have served to delay the necessary rulemaking, and thus opening the season in Minnesota would have been postponed by no less than 30 days.

Since Minnesotans do the majority of their hunting at the local shoot in early October—our season begins in early October, before the local ducks fly south—such a delay would have effectively canceled a major part of our season. But in my colleague's State, duck hunting season was mid to late November, and therefore might not have been as seriously affected by the delay.

It has always been clear to me that the bill as originally introduced did not protect the 1995 bird hunting season. Despite strong statements that it was never the intent of the bill's sponsors to put the season at risk—and, by the way, I agree that it never was the intent—the language of the bill is what matters most. And now, because of the action of the Governmental Affairs Committee, we have the protection that we need, the rulemaking goes on, and I am very proud of the fact that the men and women in the State of Minnesota and their children can rest assured that we will have no delay or cancellation and that we will have our season.

So this is a sort of thank you to my colleagues and a delivery of a very positive message to Minnesotans.

Mr. NICKLES. Will the Senator yield?

Mr. WELLSTONE. I will be pleased to.

Mr. NICKLES. Just for the Senator's clarification, as original sponsor of S. 219, I would like to inform my colleague that we did have in the original bill an exception for administrative actions. When Senator ROTH introduced the bill for markup, we had an exception for routine administrative actions. Also we have always had exceptions for licensing.

So the arguments that were made by many people—including President Clinton—who said that duck hunting licenses and burials at Arlington cemetery were jeopardized by the moratorium, were totally incorrect. The bill did state—just so my colleague will know— the bill stated and exempted from routine administrative actions—and it exempted agencies in their licensing process—which happens to include hunting and fishing licenses. So they were never in jeopardy. But I know that an amendment was clarified just to make absolutely sure that people in Minnesota would be able to hunt ducks and people would be able to go fishing without any prohibition whatsoever by this moratorium on rulemaking.

Mr. WELLSTONE. Mr. President, I appreciate the comments of my colleague. I want to say to him that I have, of course, heard this before. The key distinction was that the hunting season is not covered by the administrative exemption nor are we talking about licensing. We were talking about the rulemaking the Fish and Wildlife Service undergoes every year to open the migratory bird hunting season. The problem was that the moratorium on rulemaking would affect this hunting rule. That is what I said. The legislators have to be careful with the language. The fact is that the change was made today in Governmental Affairs to make sure that Fish and Wildlife could go forward with that rulemaking and we will have our season. The proof is in the pudding. I am delighted the change took place.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

Mr. WELLSTONE. Mr. President, I would like to respond for a moment, and then defer to my colleagues from Massachusetts and Illinois because I had an ample amount of time to speak this mornings. I will not take more than 5 minutes.

I want to make two points. I made them this morning. I would like to be as concise as possible.

The first point is I think the issue is very clear. Senators can vote different ways on this question. The President's Executive order says that when the U.S. Government has a contract with a company, a contractor which in turn permanently replaces its workers during a strike, then our Government will not be using taxpayer dollars to support future contracts with such a company. It is a simple proposition. Which side is the Government on?

What we are saying is that our Government is on the side of workers, of middle-class people, of working families. It is very simple. One more time it is a shame that our country has not joined many other advanced economies with legislation that would prohibit this permanent replacement of workers. I think we would have passed that bill if not for a filibuster in the last session. That is in fact what happened.

The second point. I think it is extremely important that—as much as I respect the Senator from Kansas, I think she is one of the finest Senators—I believe that her amendment is profoundly mistaken because I think this Executive order is extremely important.

The second point is that I do not think that you can separate this amendment that we are speaking against from the overall Contract With America which has just represented an attack on men and women who are trying to work for decent wages, on children, on the whole question of higher education being affordable for families, on the question of whether or not people are going to be able to afford health care. These issues become very interrelated.

In that sense, this debate and this vote is about more than this amendment. To be able to be work at a job that pays a decent wage so that you can support your family is very closely tied to whether or not you have collective bargaining rights, very closely tied to whether or not you have some assurance that if a company forces you out on strike, if nobody wants to go out on strike, what will then happen is that you will essentially not be permanently replaced and crushed. That is what this is all about, protection for many workers, many employees, and many of their families. That is what this is all about.

For the life of me, Mr. President—I conclude on this because I spoke this morning—I simply do not understand why some of my colleagues make such serious objection to this proposition.

I yield the floor.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I spoke earlier today in opposition to the amendment by the Senator from Kansas.

I would like to point out a couple of things. I mentioned this morning that

permanent striker replacement is against the law in a number of countries, and someone apparently has since questioned whether that is true in Japan because I list Japan as one of the countries where it is illegal.

Let me quote article 7, section 1 of the labor union law of Japan.

The employer shall not engage in the following practices: (1) discharge or show discriminatory treatment towards a worker by reason of his being a member of a labor union or having tried to join or organize a labor union or having performed an appropriate act of a labor union * * *

Now I would like to quote from the Congressional Research Service.

The words "an appropriate act of a labor union" are construed to include acts arising from collective bargaining with the employer, such as strikes, picketing, and so on. Therefore, under Japanese law it is unlawful for an employer to discharge a striking employee.

In other words, what President Clinton has done is to give through Executive order workers in the United States the same protection that workers in Japan, Italy, the Western European nations have, with the exception of Great Britain. The only Western industrialized nations that do not offer this protection are Great Britain, Hong Kong, Singapore, and the United States of America. This morning someone pointed out to me that I failed to mention Greece as one of the nations that has this particular stipulation.

When my friend from Oklahoma, Senator NICKLES, mentioned that the action is unprecedented and invalid, the courts would find it invalid. Let the courts decide—not the Senate of the United States on an emergency supplemental appropriations for the Department of Defense.

Mr. KENNEDY. Will the Senator yield?

Mr. SIMON. I am pleased to yield to my colleague from Massachusetts.

Mr. KENNEDY. Mr. President, I notice that the Senator from Oklahoma had been talking about the amendment of the Senator from Kansas and raising questions about what would happen to the Defense Department should they have a contract, for example, on the F-16 or F-18. I take pride that most of the engines for the military are manufactured at a General Electric plant in Lynn, MA. There are some Pratt & Whitney engines by our good neighbors in Connecticut—but for the most part the engine parts are manufactured in my State. The company does absolutely spectacular work on the new advanced fighters and beyond that.

The question was raised by the Senator from Oklahoma, what would happen to these engines should this major contractor go out and have these striker replacements. Well I was watching the sports program last night where we saw those replacement players trying out for the major leagues. And I think it is every young boy's goal to play in the majors.

But I sure would not want our pilots, our servicemen and women, if they had to be called back to the Persian Gulf or elsewhere to have to be flying planes manufactured by replacement workers, or those engines being made by replacement workers, or those weapons systems, which could be the difference between life and death. Does the Senator agree with me that one of the principal reasons for this kind of Executive order is to make sure that we are going to have thorough, professional, competent, highly skilled, highly trained, and highly disciplined workers doing a job for America? I am just wondering whether the Senator reaches a similar conclusion.

Mrs. KASSEBAUM. I wonder if the Senator will yield for a question?

Mr. SIMON. I have the floor, and I would like to respond to his question, and then I will be happy to yield to the Senator for a question. I think the point made by the Senator from Massachusetts is absolutely valid. You can be a good, sincere person, but just not be a good replacement baseball player or person working in an airplane factory. I am going to be leaving the U.S. Senate after 1996. The Chicago White Sox are not interested in me. I cannot understand it, but that is the reality. Michael Jordan was a great basketball player, but he did not do very well on the baseball field.

I think the point made by my colleague from Massachusetts, Senator KENNEDY, is extremely important. We find, even where you do not have permanent replacements, sometimes factories try to keep going and the results have not been quality products. When we are talking about the defense industry, we want quality production. I point out also to Senator KENNEDY that France makes military equipment. They sell planes, and they prohibit permanent striker replacement. Germany makes weapons; they prohibit permanent striker replacement. Italy manufactures military equipment; they prohibit permanent striker replacements. I have not heard from anyone that has said that, in any way, inhibited them from moving ahead. My colleague from Kansas wishes to ask a question.

Mrs. KASSEBAUM. I thought I heard the Senator from Massachusetts suggest that permanent replacement workers would not be able to offer the same type and quality of work. Would you feel any safer with temporary replacement workers, because this Executive order permits temporary replacements? So I think, if the question was what type and quality of work will be done by the permanent replacements, I suggest it could be far more risky with temporary workers.

Mr. SIMON. I say to my friend from Kansas that if she wants to go further and prohibit temporary striker replacement, I will support that endeavor. As a matter of fact, Quebec does that right now. Canada, as a whole, prohibits permanent striker replacements. In Quebec, you cannot even have temporary striker replacement. But whether they are temporary or permanent, there is no question that striker replacement results in a diminution of quality of the end product. The point made by Senator KENNEDY is an absolutely valid point.

Let me make a couple of other points while I have the floor, Mr. President. When the Senator from Oklahoma says Congress has clearly stated its opinion on striker replacement, that is true, only it is not quite the way it was implied by my friend, Senator NICKLES. The reality is that the House of Representatives passed a bill to prohibit striker replacement, and in the U.S. Senate, 53 Members went on record for this, a majority in the U.S. Senate—53-47. But because of our filibuster rule, we did not pass a law.

When the Senator from Oklahoma says Congress has clearly stated its opinion, he is correct. But contrary to the situation when in 1991, a number of people, including the present Speaker and present majority leader of the House, introduced legislation that would have required employees to be notified in writing that they could not be required to join a union, that did not pass either body. But George Bush issued an Executive order requiring that notices be put up in all workplaces telling employees that they are not required to join a union.

To my knowledge, no one tried to reverse that. We recognize the authority of the President to issue that kind of a statement.

Finally, Mr. President, I see my friend from Texas anxiously waiting a chance to get the floor. Because we have had a discussion of social issues, and the Senator from Washington, Senator GORTON, said that there has been no demonstrable success in our social programs, the reality is, as we have pared down the appropriations for our social programs, more and more of our children are living in poverty. We, today, have 23 percent of the children of the United States living in poverty—far more than any other Western industrialized nation. That is not, as I have said on the floor of this Senate before, an act of God; that is a result of flawed policies. We have to show greater sympathy and concern and we need to have programs to help people.

We are on one of these basic philosophical arguments here: Should Government tilt against working men and women, or should it not? I think Government should not tilt against working men and women. I think that is the fundamental issue here.

Mr. President, I yield the floor. I see the Senator from Texas, and I am sure he will agree with every word I have said here.

Mr. GRAMM. Mr. President, I know it does not have anything to do with the debate we are having, but I want to answer two questions that were posed by our colleagues.

Let me go back to the Executive order issued by President Bush, because the Executive order issued by President Bush was to enforce a Supreme Court decision called the Beck decision. I am not terribly proud of the fact that Executive order was delayed for 2 years before it was finally issued. The Beck decision came about when a man named Beck, who was working in a State that permitted mandatory unionism, said that part of his dues were being used for political purposes and that he did not support the political aim of organized labor. So Mr. Beck, through long court battles that ultimately reached the Supreme Court, argued that his constitutional rights were being violated, because he was being forced to provide money for political purposes that he did not support.

The Supreme Court ruled that Mr. Beck was right and ordered that he and every other worker be told how much of their union dues went for purposes other than to fund collective bargaining. President Bush and the Bush administration, after delaying the implementation of that ruling, finally issued an Executive order to implement it.

So the Beck decision was based on a Supreme Court ruling having to do with the constitutional rights of a worker.

It is hardly worth arguing the point raised by our dear colleague from Massachusetts when he asked if our men in combat want spare parts produced by replacement workers? Well, if the alternative is no spare parts, the answer is clearly, yes.

None of this, however, has anything to do with this issue. People want to cloak this issue in the union-management cloak. And since there are more people who work than people who hire workers, it is a good cloak in which to try to hide that which is a legitimate issue of freedom. But the issue involved here could not be clearer, no matter how you define it, when looking at the rights of a free people.

If I do not want to work for you, I have the right to quit, and no one can deny me that right as a free person. But if I do not want to work for you, I do not have a right to keep you from hiring somebody else.

What is being proposed here is that the Government step in and say, oh, it is all right, if I decide not to work for you, for me to quit; but if I decide to quit through a strike—even though it may put you out of business, even though it may decimate the city in which your company is located—you cannot hire people to take my place. Now, you can hire temporary workers, who have to be fired the minute I want to come back, which means in reality that the company has almost an impossible time finding people to work for it. So what you are doing, in essence, is giving one party to a labor contract the right to put the other party out of business.

We have debated this issue. It has been debated many times in Congress. It was debated in the last Congress when the Democratic Party had a majority in both Houses of Congress. And under the rules that we operate under, as a free society and as the greatest deliberative body in history, it was rejected. Those who supported taking away the rights of an employer to hire another worker when a worker refused to work for that employer were defeated in the U.S. Senate.

Now President Clinton has come in and said that what he could not do through the legislative process, he is going to do through Executive order; that by Executive order, he is going to say to any company that has a contract with the Federal Government of over $100,000, that the Secretary of Labor will be empowered to say to those companies that if you have a strike and the strikers will not come back to work, you cannot hire permanent replacement workers who want to work to keep your company in business. And if you do hire permanent replacement workers, we have the right to take away and break any Government contract you have and bar you from getting any contracts with the Federal Government.

There are a lot of gray areas here, but as I read this, if General Dynamics—of course now Lockheed of Fort Worth—had a sand and gravel operation, in addition building F-16's, and they had a strike in their sand and gravel operation that shut them down as the major employer in a small town in North Carolina, and that small town had lots of unemployment and many people who were willing to come to work in sand and gravel extraction, those people could not come on as permanent employees because General Dynamics would have its contracts in Fort Worth with the Federal Government abrogated.

Mr. President, why, in a free society, should we want to do this? Why, in a free society, should we say to someone who, after all, has put up their capital, saved all their lives to start a business, created jobs—which people voluntarily took and voluntarily decide leave—that they are prohibited from hiring somebody else who wants to do the work? Why should we do that?

Well, there is no argument for doing that other than greedy special interests.

A President who says that he is some new kind of Democrat, whatever that means, a President who says that he was coming to Washington to end the cozy special-interest way of doing business, comes to Washington, and by Executive order, gives one of the largest and most powerful special-interest groups in America the right to intimidate and the right to destroy people's businesses. It is not right.

This ought to be stopped, not because of labor and management rights; it ought to be stopped for the very simple reason that it is fundamentally and profoundly wrong to do this.

What the President is doing is using the contract power of the Federal Government to deny people their rights. What he is doing is denying the rights of the people who have put up their life savings, who have started businesses, and who want to provide jobs when there is a strike. The people who had the jobs do not want to do the work.

Under our existing laws, under our legal system, if other people are willing to come in—and often subject themselves to all kinds of intimidation, both physical and verbal—and take a job and work because they want the job, they have that right. The Congress voted on this issue and the President was unable to prevail. He certainly could not prevail in this Congress, because Americans, based on the areas where he did prevail, said no to exactly this kind of special-interest deal.

Now the President is trying to do this by Executive order. What we are trying to do is to stop the President. This is within the prerogative of Congress to make the law of the land. And I do not think anybody here who looks at this will see this as anything more than a payoff to special interest.

I do not know what is going to happen on this amendment. I understand there is going to be a motion to table. There may be a point of order. I, for one, am going to vote to overrule the Chair on this issue.

And I want to promise my colleagues this issue is not going to go away. I do not know how many times we are going to debate it, but I am determined that the President is not going to win on this issue, because it is not right. I can assure you that, in good time, when the American people finish the job they started in 1994, if this Executive order is still standing, it will not be standing much longer after 1996.

But this is a very important issue. This is a freedom issue. This does not have anything to do with unions. This does not have anything to do with employers. It has to do with the right of a free people to withhold their labor and the right of the employer to hire somebody else who is willing to work.

To get into all of this jargon about collective bargaining confuses the issue and is an attempt to cloak the fact that we are really talking about the rights of a free people.

I am going to do everything I can, as one Member of the Senate, to stop the President from limiting the freedom of

employers, people who put up their capital, to hire replacement workers when the people who are currently working refuse to work. And I am going to do it not because of labor versus management, or management versus labor, but because you either believe in freedom or you do not, and I do. I think this is a fundamental issue.

I congratulate our colleague for bringing this issue up. I want to urge her to stand by this issue. I would rather lose on a technicality and continue to fight this issue than to pull this down and allow the President to do this. He may be successful. But I think people ought to know where our party stands and where our Members stand. We are opposed to this kind of special-interest power grab and political payoff, because it is fundamentally wrong and it is fundamentally rotten, and it ought to be stopped.

So I urge my colleagues to support this amendment, whether we vote on a motion to table or whether we vote on the germaneness rule—we have overruled germaneness on many occasions, and it takes simply a majority. I think that we ought to do it in this case. If we cannot do it this time, we will have a lot more bills that this President is going to want to pass. He will face this issue on each and every one of them until finally we prevent this outrage from occurring.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I have listened to the distinguished Senator from Texas with great interest. Let me say to begin with that I am not a strong apostle of Executive orders. I suppose they number into the thousands. There have been Executive orders going back over many, many decades.

Some things that the distinguished senior Senator from Texas said have caught me with a strong sense of fascination. He talked about this Executive order's being a "political payoff" by the President. It seems to me that we allow ourselves sometimes to make some very extreme statements. I do not know that that statement by the Senator from Texas can be documented. I do not know that it can be proved. I think it is a rather reckless charge. I would assume that those Members, like myself, who oppose this amendment might likewise be charged with political payoffs, if that theory is carried to its ultimate conclusion.

Let me say to the distinguished Senator that he has no monopoly on standing up for freedom—freedom of conscience, freedom of the individual to work. When God drove Adam and Eve from the garden, he issued an edict that has followed man through the course of the dusty centuries and will accompany man to the end of his days: "In the sweat of thy face shalt thou eat bread, till thou return unto the ground; for out of it wast thou taken: for dust thou art, and unto dust shalt thou return."

The distinguished Senator from Texas speaks of "intimidation." I can remember the days when the Baldwin-Felts Detective Agency was brought into West Virginia.

The Baldwin-Felts Detective Agency was headquartered in Roanoke, Virginia and Bluefield, West Virginia.

The Roanoke office operated primarily as railroad detectives.

The Bluefield office, headed by Tom Felts, operated primarily as mine guards. They were originally employed by the coal companies to police the unincorporated coal company towns. As the union movement began to grow, they began to serve more and more as union busters. The miners would call them "thugs."

It became their primary job to keep union organizers out of the company towns. If the miners went on strike, they evicted the miners from the company houses, and used whatever means necessary to break the strike, from bullying the miners, to beating, and even murdering.

The Baldwin-Felts operated throughout southern West Virginia with the exception of Logan County. In that county, Sheriff Don Chafin maintained a 200-man deputy sheriff force, allegedly in the pay of the coal companies in Logan County, and it was their job to keep the union organizers out of the county.

I mentioned that Tom Felts headed the Bluefield office. His brothers, Lee and Albert, both Baldwin-Felts mine guards, were two of the eight guards who were killed in the Matewan Massacre.

The coal miners of West Virginia have seen intimidation. I grew up in a coal miner's home. I can remember when there was no union. The man who raised me, who was kind enough to take me as an orphan—I was 1 year old—and brought me up in his home, was a coal miner. I can remember the days when he worked from daylight until after dark to "clean up his place."

That meant that a coal miner, if he did not clean up his working place, if he did not remove all the slate, the coal, and the rock, that had been shot down with dynamite, if he did not clean it up before he left that night, was told that there was always someone else who would be glad to take his place. There was no union to protect his job.

The coal miners took what they were given. They had no weapon with which to fight back. Many times as a boy I recall going down to the company store at Stotesbury, in Raleigh County where I lived, and reading on the bulletin board a notice that, come the beginning of the next month, the miners would suffer a cut in their wages. The price per ton of slate, the price per ton of coal, would be reduced from 50 cents to 45 cents, or to 30 cents or to 25 cents.

In those days coal miners wore their carbide lamps on cloth caps. They had no way of demanding that safety be enforced in the workplace. They bought their own dynamite, they bought their augur, their pick, their ax, their shovel. I have been in the mines, and I have seen where my dad worked. I could hear the timbers cracking to the right, the timbers cracking to the left.

I saw the water holes through which those men had to make their way on their knees. The roof was not high enough for them to walk upright. They had to walk on their knees. They had to shovel that coal, shovel the rock and heap those cars with the loads of slack or lump coal or slate or rock or whatever it was, while on their knees.

They had no way of demanding that their pay be increased. They just had to take whatever the company decided at a given time to pay them. There was no union. I was there when the coal miners union came to West Virginia, the coal miners union. I can remember the coal miners having to meet, in barns, in empty buildings, clandestinely, in order to organize a union.

Many times I have seen my dad overdrafted on payday. He had worked the full 2 weeks, and on payday was in debt to the coal company. Then when the union came, I saw the faces of those coal miners. The faces would light up. At last, the coal miners had a weapon with which they could bargain collectively concerning their wages and their working conditions. They could strike, if need be, to force the company to improve health and safety conditions, and to enforce safety in the workplace.

Many times I walked into the miners' bathhouse at Stotesbury—not many times, but several times I walked into the bathhouse at Stotesbury—as a boy and as a young man and I saw stretched out on the bathhouse floor a dead coal miner who had been electrocuted or run over by a mine motor. One of my friends, Walter Lovell, had both legs—both legs—cut off one night by a runaway motor. In this day and time, his life might have been saved. But he died of loss of blood and gangrene. My own dad mashed his fingernail. He lost his finger. If it had been 2 or 3 days later before going to the hospital, he would have lost a hand. Another week, he may have lost his life.

I can remember seeing a man in the coal mining company's doctor's office at Stotesbury, waiting in great pain because he had mashed his finger and gangrene had set in. Within a few days, he was dead.

The distinguished Senator from Texas used the phrase "they don't want to work," "don't want to work." Perhaps they do not want to work because

they want certain safety conditions improved. It is not laziness always. Now, I have not always agreed with the unions, and on some occasions, I have not sympathized with strikes. There have been some strikes that I thought were not called for. But because miners or other workers seek to improve their safety conditions, their working conditions, their wages is not a matter of their not wanting to work.

When I ran for the U.S. Senate, I was initially opposed by John L. Lewis, the coal miner's chieftain. He eventually came around to support me, but the thing that made my decision to run for the U.S. Senate, may I say to the Senator from Texas, the thing that made the decision for me to run for the U.S. Senate was the very fact that Mr. John L. Lewis, the president of the United Mine Workers, sent word to me in West Virginia not to run for the Senate, but instead to run again for the House of Representatives.

I had been elected to the House three times, and I decided I would like to get around the State during a break between the sessions and determine what kind of support I would have for a Senate race. While I was in Wheeling, West Virginia, one night, I got word from a man by the name of Bob Howe, representing the United Mine Workers of America—John L. Lewis' liaison man working on the House side.

While I was in West Virginia, Mr. Howe called me on the telephone and said, "I'd like to talk with you. When will you be back in Washington?"

I said, "I don't know when I'll be back. What do you want to talk about?"

He said, "Well, 'the boss'"—the boss—"wants me to get a message to you."

I said, "Well, the closest I will be to Washington for several weeks will be when I go to Romney next Thursday night to speak to a Lion's Club," or whatever it was, a civic organization.

He said, "Fine, I will come over there and meet you."

So he drove over to Romney, West Virginia. We met. The message was from Mr. John L. Lewis, who sent word that he did not want me to run for the Senate; Mr. Lewis wanted me to run for reelection to the House.

He said, "You have a good labor record. We will be glad to support you for the House, but if you run for the Senate, Mr. Lewis will come into West Virginia and campaign against you. He will campaign for William Marland," who was a former Governor of West Virginia. So I said to Mr. Howe, "I'll be in touch with you."

That very night, I drove south into Beckley, WV. Those were the days when we had nothing better than a two-lane road in West Virginia. We did not have four-lane roads in West Virginia. I can remember the days when we did not have two-lane roads in West Virginia and when we even had to blow the horn on the car when we went around a curve.

In any event, I drove to southern West Virginia that night, and on the way, I stopped at a telephone booth in Petersburg, Grant County, which, by the way, is a strong Republican county, about 4-to-1 Republican, and goes for ROBERT C. BYRD.

Snow was up around my ankles when I went into that telephone booth. I called my wife and I said, "Erma, I've reached my decision."

She asked, "Concerning what?"

I said, "Running for the Senate." I said, "I've made up my mind."

"What made your mind up?"

I said, "John L. Lewis. When he threatened to come into West Virginia and campaign against me, that made my decision."

She was back here in Arlington in our little five-room house at that time, taking care of our young daughters and the dog. We had a dog named Billy. That was Billy Byrd I. We now have Billy Byrd II.

I drove south and got into Beckley in the early morning, called a few people in southern West Virginia, called in the press, and I said, "I'm going to be a candidate for the Senate. William C. Marland is going to be my opponent, and John L. Lewis is going to come into the State and support Mr. Marland."

Not long thereafter, Senator Matthew M. Neely, a Senator from the State of West Virginia, died. Instead of Mr. Marland's running against me, he filed for the unexpired seat of Mr. Neely. It was then that Mr. Lewis asked me to come downtown and see him at his office. The coal miners in West Virginia had been upset at the prospect that Mr. Lewis had planned to support Mr. Marland against ROBERT BYRD.

So I went downtown to meet with Mr. Lewis at his office. Mr. Lewis looked at me with those twinkling blue eyes that seemed to pierce right through me, and said, "Young man, I resented your announcing that I would come into West Virginia and support Bill Marland against you. I'm in the habit of making my own press announcements."

And I said, "Well, Mr. Lewis, you are a great labor leader. My dad was a coal miner. I can remember when there weren't any unions and today there are 125,000 coal miners in West Virginia, and they are in your union. You have been a good labor leader. And the union has been good for the coal miners. But when you sent Mr. Howe into West Virginia to tell me to run for the House again, not run for the Senate, and that you would come into West Virginia and campaign for Marland against me, I resented that. And that made up my mind. That made my decision to run for the Senate. Mr. Lewis became a strong supporter, and we were friends until his death.

I say this just to say to my friend from Texas that some of us who oppose this amendment today do not feel that we are paying off any debt to any special-interest group.

I was opposed by Mr. George Titler, the president of the United Mine Workers, district 29, when I ran for the West Virginia State Senate in 1950. Why? He called me into his office after I was elected to the House of Delegates in 1946, before the first meeting of the House of Delegates in the session of 1947, and told me he wanted me to vote for a certain individual for Speaker of the House of Delegates. I said, I can't do it. I'm going to vote for his opponent.

I told him why. I said, "In the first place, I have assured this man I would vote for him. In the second place, I have been told by those who serve in the legislature that he is the better man. I am going to vote for him as I promised." Whereupon Mr. Titler said, "When you run for reelection, we will remember you." Consequently, in 1948, when Harry Truman ran for reelection, the leadership of the United Mine Workers in that district was opposed to my reelection.

Here I was, a little old Member of the House of Delegates, running for reelection to the House of Delegates in a big election. There were many other offices at stake. Yet, the headquarters of the UMWA District office concentrated on that poor little old coal miner's son's run for reelection to the House of Delegates. I won the election. Do you know how I did it? I went right down into the local union meetings with my campaign.

George Titler even visited the Stotesbury local union—of which my dad was a member—and urged those miners to vote against me. I sat in on the meeting, and when Mr. Titler completed his speech, I spoke to the coal miners; I spoke their language. And they gave me their overwhelming support.

The distinguished Senator from Texas speaks of those who invest capital. We have to have investors of capital. They have helped to make this country a great country. But what is the working man's capital? The working man's capital, my old coal miner dad's capital, his only capital was his hands and the sweat of his face. God had laid that penalty upon man: "In the sweat of Thy face shalt thou eat bread."

There is nothing more noble than honest toil. And so it is, that I stand today against this amendment. Intimidation works two ways. No longer is the coal miner intimidated. No longer is he driven as with a lash. "Clean up your place; if you don't, there is somebody else waiting for your job." No longer does the coal miner have to buy at the company store.

Something can be said, of course, pro and con, about almost everything. I

have never been ruled by any union. They know that. I have never worn any man's collar but my own—none. The Governor of West Virginia once asked me to get off the Democratic ticket. I said no.

I could tell the Senator from Texas many stories, I think, which would perhaps delight him because I stood up against the top leadership in the union, but the rank and file coal miner stood with ROBERT C. BYRD. They knew I was their friend. I was their friend then. I will always be their friend.

The Senator may very well remember an occasion when I offered an amendment here to help the coal miners and fought hard for it. I went to the offices of Republicans and Democrats in the interest of my coal miners amendment. The then majority leader, Mr. Mitchell, was against me. The then minority leader, Mr. DOLE, was against me. The President, Mr. Bush, was against me. I had the battle won until right there in the well of the Senate, the joint leadership peeled off three votes that had looked me in the eye and said they would vote for my amendment.

Well, that was pretty tough to lose, but I got up off the carpet, dusted myself off and, magnanimous in defeat, said, "I lost. Let's go on to the next one."

I say to my friend from Texas that I have faced intimidation personally, and I have seen the coal miners and other workers of this country face intimidation when the only weapon that they had was the union—the only weapon they had with which to protect their rights. And so I stand against the amendment.

I do not speak evil of those who support the amendment. We have different viewpoints around here. But these are not "greedy special interests," not the people I represent. They are not greedy special interests, the workers in West Virginia.

The Senator may wish to comment while I have the floor. I will be glad to hear what he has to say.

Mr. GRAMM. If the Senator will yield, I am always educated when I listen to the great former chairman of the Appropriations Committee, and I think he has given us a great lecture this afternoon.

I appreciate him yielding because I have to go back for an appointment, but I wanted to make a point. Everything that the Senator has said today I agree with. There was a time in this country where power was vested too greatly in the hands of business, and it created a distortion in the marketplace. That needed to change, and we changed it. Now, some people did escape it. I am looking at one of those people, a great testament to the fact that America works. ROBERT C. BYRD is a great testament to the fact that America is a great country and a land of opportunity.

My point, Mr. President, is that you can go beyond the point of having a fair balance. It is one thing to guarantee the rights of people to strike, to be a member of a union and give them the ability to go to the employer and say these are things we demand or we will withhold our labor. But once you reach the point where you can say to the employer, not only will we withhold our labor but we will have Congress, or in this case the President using Executive power, prevent you from hiring anybody else, that puts us in a similar position today that we were in during the era of which the Senator speaks—only this time it is those who provide the jobs having their rights denied.

I am concerned that we are going too far in strengthening the rights of labor as compared to the rights of people who invest their money.

I am concerned that we are going to have a rash of strikes, and we are going to initiate labor unrest. Since the short period after World War II, where we had labor unrest for good reason—we had held wages back; prices had risen in the war—we have had relative stability.

I am concerned that if we take away the rights of the employer to hire a replacement worker or replacement workers when the union will not come back to work, that we will go to the opposite extreme from that the Senator spoke of. And I simply say that you can go too far in the direction of management, as the law did in the 1930's, but I think you can go too far in the direction of labor, as I believe this Executive order does.

So, with profound respect for everything that the Senator is saying, I think the President's Executive order was wrong.

Obviously this is a free society. This is the greatest deliberative body in the world. And one of the reasons it is, is because the distinguished Senator from West Virginia is a Member. But this is an issue where I think the President is wrong and I believe that this is a case of promoting the interests of one special interest—and it is a special interest. Just as business is a special interest, so is labor. I think the President is going too far. I think it hurts the country. That is why I am in support of the amendment.

It is not to say that I would ever go back; and I hope, had I served when the Senator served, that on many of those issues we might have been on the same side. But today I do not think anybody can argue that labor lacks rights. It is a question of what are the legitimate rights of the people who invest their own money, who create jobs.

It is the balance of the two that I seek, and I believe this goes beyond that delicate balance.

I appreciate the Senator yielding. I am not opposing the question, and it is very generous of him, as he always is.

Mr. BYRD. Mr. President, I respect the Senator's viewpoint. I respect every Senator's viewpoint, here.

I, too, seek a balancing of the interests. And I think that is what we are doing in opposing this amendment. As I understand the amendment, it speaks of lawful—lawful strikes. I think the strikes we are talking about are those that are lawful strikes. I think we are just going in the opposite direction if we support this amendment.

This amendment prevents any funds appropriated in fiscal year 1995 from being used to "implement, administer, or enforce any Executive order, or other rule, regulation, or order, that limits, restricts, or otherwise affects the ability of any existing or potential Federal contractor, subcontractor, or vendor to hire permanent replacements for lawfully striking workers." Obviously, if it is unlawful that puts a different color on it, a different face on it. Mr. President, the ultimate tool and the legal right of an American worker under collective bargaining, the right to strike, should not become the right to be fired. It should not become the right to be fired.

President Clinton signed an Executive order that allows the Secretary of Labor to terminate for convenience any Federal contract with a firm that permanently replaces lawfully striking workers. So I emphasize again the word "lawfully." President Clinton's order also allows the Secretary of Labor to debar contractors that have permanently replaced lawfully striking workers, thereby making the contractor ineligible to receive Government contracts until the labor dispute that sparked the strike is resolved. This order will affect some 28,000 companies that receive 90 percent of Federal contract dollars. In signing this order, the President has thrown his support, and the protection of the Federal Government, behind the principle that American workers can employ every facet of collective bargaining, including the right to strike, in their efforts to resolve labor disputes. The amendment we are considering today in my judgment would destroy that protection.

In recent years, the right to lawfully strike has more and more become the reason to be fired, or to be displaced by permanent replacement workers. Being replaced by temporary replacement workers is one thing. But being replaced by permanent replacement workers is quite another. The ability of companies to easily hire permanent replacement workers for employees lawfully engaged in a strike over proposed changes in the terms of their employment undermines the incentive of companies to negotiate the speedy resolution of labor-management conflicts. I note that, in recent years, changes in

the terms of employment are just as likely to be decreases in compensation levels or health benefits to workers, rather than increases. American workers are being asked to do more and more for less and less, or with fewer and fewer workers, than ever before. In a hearing conducted by the Senate Committee on Labor and Human Resources in the last Congress, Mr. Jerry Jasinowski, president of the National Association of Manufacturers, testified that as a result of increased global competition, additional costs must often be passed back to workers in the form of "lower compensation or lower employment." Strikes may often be the last resort for employee groups that have been squeezed hard by this process.

Proponents of this amendment have suggested in the past that legislation that would protect the return to work of American workers engaged in a lawful strike would drive jobs out of America and dampen economic growth. This is a scare tactic, plain and simple. American jobs have already been moving out of the United States. They are leaving our shores for a variety of reasons—lower production costs due to cheaper labor, greater international use of child labor, lax environmental and worker safety standards, Government subsidies, and easy or even preferential access to the U.S. market from abroad. In some overseas locations, workers have no collective bargaining rights—none. Just like the situations that were prevalent back in the coal fields when I was a boy, when miners could be intimidated or cowed into accepting wages and working conditions which would be unthinkable today. And those conditions are prevalent overseas in may countries. These would be unthinkable today in these United States. Just as those conditions back in the hollows and hills of West Virginia today would be unthinkable. They were unthinkable then, but who was there to champion the rights of the hard-working people who had to go down into the bowels of the Earth and labor with their hands and in the sweat of their face earn a crust of bread for their children?

All of these factors reduce costs for companies moving off of U.S. shores, and increase their profits. But what is good for profits is not always good for the human beings who do the work. Millions of men and women in this country have only the capital of their bare hands, a strong back, a strong neck. They will not go back to the days when that strong back felt the lash of intimidation and the threat: "Clean up your place before you leave. There is someone else waiting for your job."

I do not believe that the United States should lower its safety and environmental standards, or promulgate Third World working conditions, in order to compete on this kind of a playing field. Historically, unions and collective bargaining have served to contain the abuses of owners and management. Unions and collective bargaining have also worked historically to improve conditions for large numbers of working people previously employed in the sweatshops, in the shipyards.

Try riveting. Try welding. Try the job of being a shipfitter in the shipyards in Baltimore when the cold winds whip across the bay and freeze the vapor of your breath when it hits your eyelashes. I can hear those rivets in my dreams. I know what it is to be a worker, to have to work with my hands. There is nothing dishonorable about it. The Bible says, "The laborer is worthy of his hire."

Throughout the years, unions have helped to ensure fair and equitable treatment for employees, and these standards have carried through to nonunion workers as well. They have benefited likewise. Now, unions must strive to protect the jobs, the health benefits, the retirement packages, and compensation levels of employees from excessive devaluation in the name of competitiveness, downsizing, or restructuring.

While I agree that the United States must work to compete more effectively in global markets, and that restructuring the economic relations among the United States and her trading partners may be essential to improving and expanding trade, I do not believe that we should enter into any agreement, or support any action, that does not benefit both the American industries and American workers.

I voted against the North American Free-Trade Agreement. I voted against the Uruguay Round of the General Agreement on Tariffs and Trade in part because these agreements will likely lead, in this Senator's judgment, to the displacement of many American workers—workers unlikely to have the skills required to easily secure other employment. Such displaced workers only add to burdens we already face in terms of meeting the challenges of an increasingly competitive international economy, and also mean a continued decline in the basic standard of living for millions of Americans and their children.

Undermining whatever support exists for striking workers to return to their jobs upon the successful conclusion of negotiations further encourages companies to hire permanent replacement workers at the lowest wage that the market will bear. Strikes, it is important to note, are the absolute last resort of working men and women in some situations. A strike is not a desirable consequence for labor or management. Striking workers are faced with a considerable loss of income for an undetermined period of time.

I know. I once was a small businessman; a small, small businessman; very small; very small. I had a little grocery store in Sophia, WV. There was a big coal mining strike in West Virginia in the beginning of the 1950's. The strike lasted several months. Some of the coal miners could not get food for their children. They could not get credit at the company store. So they came to ROBERT BYRD's little jot'em down store.

They came to the little jot'em down store, the Robert C. Byrd grocery store in Sophia. I let them have food on credit. They were on strike. It was a long strike. But I let them have whatever I had in the shelves. I did not have a lot. But it saw some of them through—the coal miners in Raleigh County.

In 1952, I ran for the U.S. House of Representatives. I attended a Democratic rally one night. And the president of the United Mine Workers District, headquartered in Charleston, the State capital, was speaking at the rally.

There were three candidates for Governor. And, of course, that meant three factions. And I did not want to align myself with any faction. I wanted to be liked by everybody. I wanted everybody to be for me. I wanted the votes of all.

UMWA District President Bill Blizzard, one of those fire-eating, union leaders in the old days, was speaking when I arrived at the rally a bit late. He pointed his finger at me and said, "Whether they are a candidate for constable or for Congress"—he pointed his finger right at me. I was a candidate for Congress—"if they do not vote for our candidate for Governor, don't you coal miners vote for them."

I was not welcome at the rally. The master of ceremonies happened to be a young attorney who, after Mr. Blizzard had finished speaking, said, "Now we will have the benediction, and after the benediction go over into the other room of the schoolhouse and get yourself some ice cream and cakes and refreshments."

About that time, an old, grizzled coal miner stood up in the back of the room, and said, "We want to hear BYRD." And this enterprising young lawyer said, "You can hear BYRD some other time. We are going to have the benediction." Well, nobody is going to argue with that. Let the preacher give the benediction.

But then I said to a couple of my friends who were there with me that night, "Go out to the car and get my fiddle." I started playing a few tunes and the whole crowd came back in with their ice cream and cake and sat down. They filled the room.

I said, "When you were on strike, you coal miners, when you coal miners were on strike, who fed your children? Did Bill Blizzard, the United Mine Worker President, feed your children? How many groceries did he provide when you were in need? I fed your children. Are you going to vote against the

man who helped the coal miners when they were on strike?" They answered with a loud "No!" The miners gave me a big vote in that election, and Bill Blizzard became my supporter and friend.

So I have been a worker in the field myself. I know what it is to have my brother-in-law's father killed in a slate fall in the coal mines. I know what it is to have the brother-in-law die from pneumoconiosis—black lung.

Workers do sometimes strike for better working conditions, for safer working conditions.

They do not strike "because they don't want to work."

A strike often pits brother against brother, neighbor against neighbor, and can tear entire communities apart. However, gutting this action of last resort by allowing companies to hire permanent replacement workers, as this amendment does, removes the incentive for companies to seriously negotiate with their work force.

Research has shown that strikes involving permanent replacement workers last an average of seven times longer than strikes that do not involve permanent replacement workers. Strikes involving permanent replacements also tend to be more contentious, and can disrupt whole communities for long periods. In my own State of West Virginia, a labor dispute at Ravenswood Aluminum Corporation was unresolved from November 1990, until June 1992. This dispute resulted in the hiring of 1,000 new workers as permanent employees by the company. The striking workers were told that if and when the dispute was resolved, they would not get their jobs back. Eventually, contract negotiations resumed and an agreement was finally reached that returned union workers to their jobs. If it had not been possible to promise these replacement workers permanent jobs, efforts to find the replacements might have been hindered, giving the company greater incentive to negotiate with the union and likely resolving this labor conflict much sooner.

Proponents have argued that the status quo should remain the status quo—that no effort should be made to shore up the eroding ability of workers to strike for fair and equitable compensation, health benefits, and retirement packages. This argument simply does not recognize the changing economic and employment conditions brought about by changes in the world economy and by the adoption of recent trade agreements that have eroded the income power and options of American workers.

We must not take actions that would denigrate the inherent dignity of work or the noble role of the American worker in the life of this Nation. All of us enjoy the fruits of their labor. The sweat of their collective brows, the calloused hands, the bent backs, the wrinkled faces, and their broken health deserve our gratitude and our utmost respect. Where would any of us be without their toil?

Out on the roads they have gathered, a hundred-thousand men,
To ask for a hold on life as sure as the wolf's hold in his den.
Their need lies close to the quick of life as rain to the furrow sown:
It is as meat to the slender rib, as marrow to the bone.
They ask but the leave to labor, for a taste of life's delight,
For a little salt to savor their bread, for houses water-tight.
They ask but the right to labor, and to live by the strength of their hands—
They who have bodies like knotted oaks, and patience like sea-sands.
And the right of a man to labor and his right to labor in joy—
Not all your laws can strangle that right, nor the gates of Hell destroy.
For it came with the making of man and was kneaded into his bones,
And it will stand at the last of things on the dust of crumbled thrones.

Mr. President, I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I might yield 5 minutes to the Senator from Idaho and then have the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I thank my colleague from New York for yielding. I will not use the 5 minutes, but I did want to make a few comments in relation to the Kassebaum amendment and what I believe to be its importance in this issue that we are debating here on the floor.

Mr. President, I will also add to my statement a letter from NFIB [National Federation of Independent Business], for in that letter are several quotes that I think are extremely valuable to this debate. One of those quotes which is important, and I will mention it at this moment, as it relates to what our President has just done and the meaning of that act as it relates to a balance that we have held in labor law now for a good long while. It says:

> This balance of labor's right to strike with management's right to stay in business using temporary or permanent replacement workers during economic strikes has not been challenged by any President since 1935.

Are the working conditions and are the labor conditions of America today so different, have they changed so dramatically since we placed quality labor laws on the books of our country since 1935 that our President would act as he has acted? I simply do not believe that is true.

What our President has said by this act is, "Give in or go out of business." No President has said it that way, nor should they. It is unilateral disarmament of employers at the bargaining table. And that has never been public policy and it should never be public policy.

What was then was then; what is now is now. The world has changed significantly. And it is important that the laws that still work be allowed to work.

Certainly, the action that was taken by this President is to disallow fundamental labor law in this country and the unique balance that has been created and held for so many years.

The amendment to prohibit funds from being used to implement any Executive order that bars hiring Federal contractors who hire permanent worker replacements is an amendment that should be passed by this Congress, and I support it strongly.

If there had been a pressing need for such an order, why did this President not issue it more than 2 years ago? What has changed over the course of this President's administration that would cause for this destabilizing act to occur when no President has taken this stand for 35 years? Nothing has happened. That is the answer. So why would he do it?

If the President actually had a clear legal authority to issue such an Executive order, why did he not do it earlier?

Well, he does not have, in our opinion, that legal authority.

Why, instead, did he put all of his eggs in one basket of striker replacement legislation during the last Congress?

One has to wonder if the answer does not lie more in politics than in policy.

I concur with the Senator from Washington [Mr. GORTON] that the President has exceeded his constitutional and legal authority.

The Executive order flies in the face of 57 years of settled employment law as written by Congress, as consistently applied by the courts, and as consistently enforced by 10 Presidents and their administrations.

No President has ever launched such a full frontal attack on settled Federal laws governing employer-employee relations; on fair and flexible bargaining in the work place; on the rights of employers and employees to determine their own negotiating behavior on a level playing field; and on the Federal Government's role as impartial referee, rather than coach and cheerleader for one side.

This Executive order will be costly to taxpayers, as strikes are encouraged and prolonged against contractors working on Federal jobs; and to the general public and the economy, as the ripple effect of these strikes cause bottlenecks elsewhere in the economy, affecting suppliers, subcontractors, carriers, and others.

Like so many other clever schemes that erupt within the Capital Beltway,

this one will not help workers, it will hurt them; will not create jobs, it will destroy them; was designed to court a few elite lobbyists, not rank and file workers and their families; will shut the door to Federal contracting on many small businesses who will find this condition economically impossible to meet.

I ask unanimous consent that the letter from the NFIB be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
Washington, DC, March 9, 1995.

Senator NANCY LANDON KASSEBAUM,
U.S. Senate,
Washington, DC.

DEAR SENATOR KASSEBAUM: On behalf of the more than 600,000 members of National Federation of Independent Business (NFIB) I urge your colleagues to support your amendment to H.R. 889, the Defense Supplemental Appropriations bill. The amendment would effectively void the President's Executive Order barring federal contractors from the use of permanent replacement workers.

Such an Executive Order could increase the taxpayers' cost of federal contracts and would destroy the equality of economic bargaining power between labor and management which has been preserved for 55 years. This balance of labor's right to strike with management's right to stay in business using temporary or permanent replacement workers during economic strikes has not been challenged by any President since 1935.

In a recent poll, 81% of NFIB members oppose striker replacement legislation. Small business owners view any change in the delicate balance between labor and business as a threat to the livelihood of their business. They believe upsetting this balance will result in the following:

Increased work disruptions affecting both union and non-union businesses;

A confrontational workplace setting, which will lead to more strikes, diminished competitiveness, and lost productivity;

Increased strike activity in large companies, which adversely affects small businesses that are located near or contract with the struck company;

The creation of an unfair union organizing tool; and

An unbalancing of over 55 years of labor law.

Small business owners urge your colleagues to support your amendment to H.R. 889. Your vote on passage of the Kassebaum amendment will be considered a Key Small Business Vote for the 104th Congress.

Sincerely,

JOHN J. MOTLEY III,
Vice President,
Federal Governmental Relations.

Mr. HATFIELD. Mr. President, the announcement of an Executive order banning the use of replacement workers by Federal contractors disturbs me because it appears to circumvent congressional authority to amend this Nation's labor laws. Because of this concern, I support the effort to prevent the implementation and enforcement of this order. Nevertheless, I remain a supporter of legislative attempts that would amend the National Labor Relations Act and overturn Supreme Court decisions which have weakened what I believe to be the original intent of the law—to explicitly protect a worker's economic self-help activities through the right to strike.

Mr. BIDEN. Mr. President, all of us here, on both sides of this issue, agree that the right to strike is essential to preserving the balance of power between labor and management in this country. But that right is hollow if, by exercising it, a worker faces the loss of his or her job.

President Clinton has taken the important step of clarifying that in this country, as in the rest of the industrial democracies with less than a handful of exceptions, workers cannot be fired for exercising their legal rights.

Unfortunately, our attempts to clarify that right through legislation, led for years by Senator Metzenbaum, were blocked by filibusters, despite clear majorities that favored a ban on striker replacements.

President Clinton's Executive order is needed because Congress has been frustrated in its attempts to clear up the current untenable situation.

His action follows established precedent, such as actions by President Bush, who, in 1992, issued an Executive order to require unionized contractors to post notices in their workplaces informing all employees that they could not be required to join a union.

President Bush also used executive authority to ban unions from using for political purposes fees collected that had been collected from union members who disagreed with union policy positions.

As a Republican Congressman said at the time, this was an "effort by the President to do something through Executive order that he cannot get Congress to do."

So let's not be distracted by procedural arguments. President Clinton was well within his authority and established precedent when he issued his Executive order. Let's stick to the substance of this issue, an issue that goes to the fundamental rights of workers, and to the very foundations of labor-management relations in this country.

Mr. President, before the New Deal, striking workers had no legal protection against being fired. To provide legal protection for the right to strike, Congress passed and President Roosevelt signed the National Labor Relations Act in 1935. Without it, hostile, confrontational, and often violent labor-management relations would have persisted.

But in 1938, a Supreme Court ruling that confirmed the right to strike offered an unsolicited comment that established a legal basis for hiring permanent replacements for striking workers.

This language has remained a logical and legal anomaly ever since. In law schools across the country, law professors have struggled in vain to distinguish between firing and permanently replacing striking workers.

For many years, this problem was, in fact, academic; it had little application in the real world.

But for the last decade and more, the issue has become all too real for thousands of workers who have lost their jobs by exercising what the vast majority of Americans believe should be their right under the law.

The permanent replacement of striking workers has become an all too common tactic in labor-management disputes. In a survey last year, 25 percent of employers said that they would hire or consider hiring permanent replacements, in response to a strike. A recent GAO report found that employers hire or threaten to hire permanent replacements in one of every three strikes.

Today, the threat of permanent replacement calls into question the fundamental right to strike, upsets the balance of power between workers and management, and introduces an unnecessary source of friction and hostility into labor relations.

We have evidence that strikes in which permanent replacement workers are hired are longer, and more heated, than those in which that tactic is not used.

Mr. President, I know that there is much emotion on both sides of this issue, and I would like my colleagues who disagree with me to understand that I do not take their concerns lightly. Let me address a few of those concerns now.

We have heard in recent debate that President Clinton's Executive order will upset the balance of power between labor and management and make strikes more likely as a result. This argument is not only inaccurate, Mr. President, it shows a fundamental misunderstanding of the costs of a strike to workers and their families.

First, it is the increasing use of striker replacements that has upset the traditional balance of power between workers and employers. The President has acted to remove this source of much of the hostility and divisiveness that now attends labor-management relations.

Second, Mr. President, under no circumstance is a strike an easy option for workers who will suffer the loss of wages, health benefits, savings, and even major assets such as cars and homes to undertake a strike with no knowledge of what the outcome will be.

We have also heard, Mr. President, that without the threat of hiring permanent replacements, employers will be powerless in the face of union demands. The fact of the matter is that employers did quite well for over four decades, by stockpiling inventories, hiring temporary replacements, transferring work, and by other tactics,

without recourse to permanent replacement workers.

As we seek new ways to encourage labor-management cooperation, to recognize the shared goals of American workers and employers in a changing global economy, a first step ought to be to eliminate the unnecessary, inflammatory practice of permanently replacing strikers.

Mr. President, simple fairness demands it. And simple fairness demands that we defeat this attempt to cut out the funding for President Clinton's Executive order. I urge my colleagues to vote with me to put this relic of another era of labor-management relations behind us.

Mr. PELL. Mr. President, I strongly oppose this amendment by the Senator from Kansas. Her amendment, if adopted, would prevent the expenditure of funds by the Labor Department to carry out the Executive order President Clinton signed yesterday.

The Executive order is entitled "Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts." Simply put, this order would prevent Federal agencies from contracting with companies that permanently replace striking workers.

Current law protects workers who strike for unfair labor practices, but allows those who strike for economic reasons to be permanently replaced—a curious synonym for being fired.

Congress has attempted to legislatively rectify this inequity. Time after time, however, a minority of our colleagues has frustrated the will of the majority, often even preventing the Senate from debating the matter. In the last 3 years, the Senate has been forced to vote to invoke cloture on the bill four different times. Each time, despite garnering a majority necessary to pass the bill, a minority has ruled the day and frustrated the will of that majority: June 11, 1992, cloture failed 41 to 55; June 16, 1992, cloture failed 42 to 57; July 12, 1994, cloture failed 47 to 53; and July 13, 1994, cloture failed 46 to 53. Now, Mr. President, the opponents complain that the President is thwarting the will of Congress.

Whenever striker replacement legislation has come before us in the past, I have heard from Rhode Islanders with views on both sides of the issue. Many business people have told me of their fear of a tilt in the balance of power in labor-management relations. They have discussed their concern with being faced with one of two choices: agree to union economic demands or be forced out of business. One gentleman even remarked that he considered employee demands for increased wages to be blackmail.

I view striker replacement legislation and this Executive order differently. The legislation would restore a proper balance of power between employees and employers. Employees would have the right to strike for increased wages and management would have the right to hire replacement workers on a temporary basis. This Executive order tells businesses that if they want to do business with the Federal Government, they must respect the legal rights of working men and women or look elsewhere for business.

I look forward to a full debate on this matter and urge my colleagues to reject this amendment.

Ms. MIKULSKI. Mr. President, I rise today in strong opposition to Senator KASSEBAUM's amendment that effectively vetoes President Clinton's Executive order that prevents striker replacement from being used by Federal contractors.

I am a blue collar Senator. I support the right to strike. I can't support Solidarity's right to strike in the shipyards of Gdansk and not support the rights of American unions to strike here at home.

The President's Executive order protects the right of Americans to strike by prohibiting Government contractors who make their profit off the Federal funds from permanently replacing striking employees. The Executive order will also force these managers to deal with the issues raised in the strike, not just replace workers who protest as a last resort. It will restore basic fairness to the bargaining process.

Strikers can mean economic ruin for both the workers and the company they rely on for work. There must also be equal pressure on both the workers and the company to compromise if a strike does occur.

I believe that allowing management the threat of replacing workers gives them an unfair advantage at the bargaining table. If strikers can be permanently replaced, there is considerable less pressure on businesses to address the underlying problem and settle with their workers. However, if businesses can hire only temporary replacements and workers have to face the social economic disruption of a strike, the pressure remains on both sides to work out their differences.

It's a matter of basic fairness to American workers. It ensures fairness in resolving labor disputes. My roots are in blue collar neighborhoods—this goes to my basic values.

That is why I strongly oppose Senator KASSEBAUM's amendment. This amendment vetoes my values. I urge my colleagues to join me opposing this amendment.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I know this is a very contentious issue, and I do not question anybody's motivations on either side.

I have a deep-rooted feeling and philosophy—and I have voted on this many times—that people have a fundamental right to withhold their labor—that is, to strike—if they feel it is the only way they can make their point. I do not know what other alternatives labor has in certain cases when the process breaks down.

I support the right to strike. It is fundamental. I believe that all of my colleagues feel that way. Therefore, if one says that it is an inherent, innate right for the citizens of our country, then I have to ask the question: is it a myth, that, on the one hand we say you have the right to strike, but, on the other hand we say if you exercise that right, you will lose your job permanently? That appears to me to be an inconsistency.

I can understand if we were to set up conditions. I can understand if we said that there would be a period of time in certain industries, and if there was a certain strike in an industry that in terms of the health and welfare of the people that this simply could not be tolerated. I understand there are laws in various States—in my State—that say if you are a municipal employee and strike, you can lose your job, benefits and procedures. But that is not what we are talking about. What we are talking about is taking people and just saying, "If you strike, we will replace you permanently." I believe that flies in the face of what we are about as a Nation.

Therefore, Mr. President, I am going to, with great reluctance, make a motion to table the amendment that is before the Senate and ask for the yeas and nays.

The PRESIDING OFFICER (Mr. GORTON). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CRAIG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. D'AMATO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, had I asked for the yeas and nays?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the motion to lay on the table amendment No. 331.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Wyoming [Mr. SIMPSON] is necessarily absent.

I further announce that, if present and voting, the Senator from Wyoming [Mr. SIMPSON] would vote "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 102 Leg.]

YEAS—42

Akaka	Feingold	Leahy
Baucus	Feinstein	Levin
Biden	Ford	Lieberman
Bingaman	Glenn	Mikulski
Boxer	Graham	Moseley-Braun
Bradley	Harkin	Moynihan
Breaux	Heflin	Murray
Bryan	Inouye	Pell
Byrd	Johnston	Reid
Conrad	Kennedy	Robb
D'Amato	Kerrey	Rockefeller
Daschle	Kerry	Sarbanes
Dodd	Kohl	Simon
Dorgan	Lautenberg	Wellstone

NAYS—57

Abraham	Frist	McCain
Ashcroft	Gorton	McConnell
Bennett	Gramm	Murkowski
Bond	Grams	Nickles
Brown	Grassley	Nunn
Bumpers	Gregg	Packwood
Burns	Hatch	Pressler
Campbell	Hatfield	Pryor
Chafee	Helms	Roth
Coats	Hollings	Santorum
Cochran	Hutchison	Shelby
Cohen	Inhofe	Smith
Coverdell	Jeffords	Snowe
Craig	Kassebaum	Specter
DeWine	Kempthorne	Stevens
Dole	Kyl	Thomas
Domenici	Lott	Thompson
Exon	Lugar	Thurmond
Faircloth	Mack	Warner

NOT VOTING—1

Simpson

So the motion to lay on the table the amendment (No. 331) was rejected.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the question is on what?

The PRESIDING OFFICER. The question is on the amendment of the Senator from Kansas.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I have stated earlier, many of us want to get about the business of the appropriations bill. But it has been the decision of the Senator from Kansas to offer an amendment that affects the quality of life of hundreds of thousands of workers in this country.

As I stated earlier in the day, it is amazing to me that this institution has debated mainly two issues. One has been unfunded mandates, and the second is the balanced budget amendment. And now the first issue that comes before us affecting working people is to limit their rights and liberties in the workplace. If this amendment were to be passed tonight, millions of workers would be affected by it. Their working conditions would not be enhanced. Their wages would not be increased.

The well being of the children of those workers will not be enhanced. Their parents will not have a greater assurance of where we are going and where the Contract With America is going.

So it is an extraordinary fact that the first measure before us affecting working families is to diminish their rights and interests.

I am quite prepared to go forward, as we did earlier, with debate about the Executive order and its importance to working families. We have no interest in prolonging consideration of the underlying bill. But we do believe that this is a matter of considerable importance, and there are Senators who want to be heard.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask unanimous consent that I be allowed to speak on a matter separate and apart from the existing bill for a period of about 7 or 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator is recognized.

RURAL TELECOMMUNICATIONS TECHNOLOGY DEMONSTRATION

Mr. STEVENS. Mr. President, I want to bring to the attention of the Senate a demonstration that is currently taking place in the rotunda of the Russell Senate Office Building. I urge all Members of the Senate and their staffs to stop by and see this exhibit.

It is a demonstration of a new satellite telecommunications technology and the potential for advancing telecommunications to rural areas.

The satellite technology demonstrated in the rotunda is just one of the new applications that is coming on line in the near future. Telemedicine is one of the applications that I hope it will help bring to the farthest reaches of my State.

As I think the Senate knows, Alaska is one-fifth the size of the Continental United States. We have been using satellite technology to communicate with remote Alaskan communities since the 1970's, and in many of those communities, we have only one village health aide. Using the advanced digital technology that is now becoming available—and it is used in this demonstration—it will be possible for that nurse to send medical images to hospitals in Anchorage, or even to what we call the lower 48 States, for review by a doctor, something that cannot be done today. In these remote clinics, staffed by people who just have high school education, we are going to be able to take medicine, good telemedicine, directly to the villages.

Eventually, I hope to see even more advanced telemedicine applications like the remote surgery that is being developed by the joint civilian and military medical teams today. At the rotunda demonstration, there is also a telemedicine display, and I hope other Senators will stop by and take time to look at this display.

There are a lot of other possibilities to this type of technology. Tele-education and telecommunicating are two that come to mind.

Recently, I heard of a person who is moving his family to an island in southeastern Alaska where he is going to install advanced telecommunications facilities to allow him to continue to run his business in another State. When that same technology comes down in price, as I am sure it will, I am very hopeful that others will gladly do the same thing and come enjoy our State year round.

Finally, I want to point out that this demonstration of modern technology will allow anyone who comes by to be instantly updated on the status of the last great race on Earth. That is the Iditarod. The Iditarod is going on now. The race is 1,049 miles, from Anchorage to Nome, in the middle of winter by dogsled. Each day at 2 p.m., I receive a call over this new technology that is in the Russell Building from Susan Butcher, a four-time winner of the Iditarod. She is going point to point along the trail. She is not a contestant this year. She is reporting on the race from remote checkpoints where mushers are required to rest each day. The reason she is not in the race is because she is expecting her first child and decided not to be involved in the Iditarod this year.

The demonstration will be in the Russell rotunda until next Tuesday, March 14. It is open from 9 a.m. to 5 p.m. each weekday, and we will have a reception there on Monday evening. It is my hope that other Members of the Senate and staff will come by and see the potential of telecommunications to rural areas, such as we have in Alaska. It is a very informational, very educational demonstration, and I personally invite everyone to stop by.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from New Mexico.

CBO ESTIMATE OF PRESIDENT'S BUDGET

Mr. DOMENICI. Mr. President, I apologize to the Senate for my voice,

but I have a cold. Nonetheless, I have something to share with you that I think is important.

Today, the Congressional Budget Office has given their estimate of the President's budget or, might I say, reestimate. The Congressional Budget Office released its analysis of the President's budgetary proposals for 1996. The analysis debunks the President's claim that his budget holds the deficit in line at about $200 billion by revealing a total lack of restraint in the President's budget.

Using CBO's economic and technical assumptions, the deficit would climb from $177 billion in 1995 to $276 billion in 2000. That is a 55-percent increase in that period of time over what the President estimates and has told the American people.

Even under the administration's favored measure, the deficit, as a percentage of the gross domestic product, will rise from 2.5 percent in 1995 to 3.3 percent in the year 2000, a rather significant increase.

The Congressional Budget Office estimates that the President's budget policies will result in higher deficits than the administration projected of nearly $200 billion over 1995 to the year 2000. It will be $200 billion higher; on average, $35 billion a year.

Although the difference in the economic forecasts of the Congressional Budget Office and the administration are not great, the Congressional Budget Office's slower economic growth—the assumptions that they have—reduce the revenue take by about $65 billion.

On the spending side, the Congressional Budget Office agrees that growth in Medicare and Medicaid has slowed. It is not as optimistic as the OMB because the CBO estimates that $79 billion higher will be the cost of Medicare and Medicaid over these years.

They also estimate that the President is $27 billion low in the estimate of housing assistance and $10 billion low on unemployment compensation. That merely points out the President's budget not only did nothing, which all of you said, took no difficult steps, bit no difficult bullets, but underestimates the deficit by about $35 billion for each of the years from now until the year 2000, a 55-percent increase in the deficit. That cries out for real action.

I only regret that we will not have the balanced budget amendment to help us when we undertake this ordeal. But I am reminded over the past 4 or 5 days, some on the other side have told us that we do not need the balanced budget amendment to balance the budget. I hope when we present a way of doing it, they will support that without the balanced budget amendment as a hammer from the people of this country.

I yield the floor, and I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS ACT

The Senate continued with the consideration of the bill.

CLOTURE MOTION

Mr. DOLE. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on amendment No. 331 to the committee amendment to H.R. 889, the supplemental appropriations bill.

HANK BROWN, NANCY LANDON KASSEBAUM, JOHN ASHCROFT, JON KYL, LAUCH FAIRCLOTH, DON NICKLES, STROM THURMOND, DAN COATS, JUDD GREGG, SLADE GORTON, BOB DOLE, CHUCK GRASSLEY, CRAIG THOMAS, CONRAD BURNS, TRENT LOTT, MIKE DEWINE, PETE DOMENICI.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I understand that the exact time for the vote on the cloture motion will be determined by the majority and minority leaders, but I would expect that the vote will be sometime next Monday. Am I roughly correct?

Mr. DOLE. The Senator is correct. It will not be on Saturday.

Mr. KENNEDY. And I imagine the exact time will be established by the leaders.

Mr. President, I look forward to the opportunity to vote on the amendment at that time. I will urge my colleagues to vote in opposition to the amendment. It seems to me that this is legislation on an appropriations bill. It is an amendment that is unrelated to the underlying measure. It is an important public policy issue and question.

I have tried over the course of the debate to raise the particular fact that the first measure that we are considering in this Chamber affecting working people is basically to diminish their rights, their hopes, their opportunities. A number of us have been struggling to try to find ways to enhance the lives, the opportunities, and the resources of working families because I think that is a core issue for the future of our country and for the millions of Americans, over 100 million Americans, who go to work every day.

Many of these workers face diminished incomes, increasing concern about the quality of life for themselves and their families. They are looking to the future with increasing concern about the schools their children attend, the services of which are being cut back on the Contract With America. There will be cutbacks in the school lunch program, cutbacks in summer jobs, and cutbacks that are being recommended in the Budget Committees for the student loan programs and the work study programs. These are programs that benefit working families.

So the working families of this country watching this debate tonight are not going to have a great deal of satisfaction about the Kassebaum amendment and I hope they understand why we are resisting it.

One of the important measures which we will have an opportunity to consider, hopefully earlier in the session rather than later, will be the proposed increase in the minimum wage. That is something that can make an important difference in the lives of working families in this country, to recognize that work is important, that work ought to be rewarded, that men and women who are prepared to play by the rules and work the 40 hours a week, 52 weeks a year, ought to be able to have a living wage. The proposal that the President has suggested would not restore the minimum wage to the purchasing power that it had at other times, but nonetheless would make a very important and significant difference to those families.

A number of those families will be here tomorrow at 10 a.m., in the Russell caucus room, on March 10, 1995, at 10 a.m.

The Secretary of Labor, Secretary Reich, and the mayor of Baltimore, Kurt Schmoke, will both be there, as will a number of business owners, economists and others at a forum on the minimum wage. We will learn about what is happening to working families in Main Street America.

In the plants and factories, in the small shops, what are the real conditions that are out there? Earlier in the day we discussed the profile of many of the workers who had been permanently replaced by strikebreakers.

But let me just take a few more moments of the Senate's time to talk about some of those who have been replaced, some of the workers who have been replaced. These are the kind of "special interests" that I am standing up for tonight and will stand up for, because their lives, and similar workers' lives, can be affected by whether we continue the President's Executive order or whether that is undermined by legislative action.

I am thinking of Francis Atilano, 58 who was hired by Diamond Walnut in September 1978.

I worked for them until the strike began, I was replaced by a new employee.

The strike has caused many changes in our lives. I have been very depressed about losing my job and not knowing what will happen in the future. I have been under a doctor's care for depression.

I had hoped that maybe I could retire from Diamond Walnut in the future with a pension. Now I don't know what we will do since my husband's low paying job has no pension plan.

We at the present time are having a very hard time trying to make ends meet. We have our youngest son whom we are trying to get through college, so he will not have to struggle with life as we have.

The depression even sets in more whenever I think of our 6 children and 19 grandchildren. While I was employed I was able to buy them a little gift once in awhile, and also take the grandchildren to a park or somewhere.

Francis Atilano, age 58, has been replaced by a permanent strike replacement.

Or Willa Miller, 54, started working at Diamond Walnut in 1961, as a young mother with 3 children.

I am now a grandmother with 7 grandchildren. I went out as a QC Supervisor, worked there 30 years. I was a sorter, checker and QC Sample Girl.

I had to sell my second car and I had to get a part-time job to make ends meet. The Union has really helped me during this strike and I have made many friends and I am closer to them. I joined a prayer group which has really helped me also, other prayer sisters in this strike. We have been there for each other.

Five-year-old Vanessa Contreras was 3 years old when Diamond Walnut permanently replaced her striking mother, causing Vanessa and her mother to lose their family home.

Vanessa is in kindergarten at the Stockton Commodore Skills Center. Her favorite subjects are writing and drawing, and she likes to play with dolls. Her birthday is March 26. Vanessa's mother reports that she has just been learning about the President in school.

Griselda Contreras had been working at Diamond Walnut since 1979. She started as an entry sorter, and over the years worked her way through a number of positions. By the time of the strike in 1991, she was a supervisor in the canning department.

Ms. Contreras volunteers once a week in her daughter's class. She came to the United States from Guadalajara when she was 15 years old. Before going to Diamond, she worked as a bilingual aide for the school district.

I think of Olga Riuz, 62, who is a single parent who has worked for Diamond Walnut for 10 years.

She has two sons, aged 38 and 36 in addition to a 9-year-old grandson and a 5-year-old granddaughter. Olga says they are "good kids," and that she "talks frequently with them about the strike."

When she goes to Stockton, Olga's granddaughter loves to go see the strikers carrying their signs at Diamond Walnut. She asks lots of questions about the strikers.

In her spare time she loves to crochet and raise vegetables in her garden. Her spare time has been cut into by the strike. Olga is no longer able to read the Bible in church because of her added responsibilities * * *.

The list goes on and on. These are the real people who have been replaced. These are the real people who saw their wages reduced. These are the real people who saw the profits go up at the Diamond Walnut some 30 percent. These are the real people who were striking to get the $8, $9, $10, $11 an hour, were receiving that, then took the pay cut, and then were trying to recover that when they saw the company's profits rise by millions and millions of dollars. They tried to at least reclaim the wages that they had forsaken earlier. And these are the individuals, these are the special interests, individuals who have all been dismissed at a time when Diamond Walnut was participating with Government assistance in expanding their markets overseas.

Those are the real Americans whose interests we are attempting to protect with this Executive order. Those are interests that are worthy of protection. I know that there are those who say, "Well, it is the right of employers who control capital to treat workers the way that they want to in a free country." There are those who believe survival of the fittest is not just the law of the jungle, it is the law of the economy as well. I do not think that represents the views of the American people.

There were those in my own State at the turn of the century who believed that, and used to employ child labor in the textile mills up in Lowell and Lawrence—8-, 9-, 10-, and 11-year-old children who worked in those mills. There were people who said the employer had the capital. He was prepared to put up the money and, therefore, we ought to have permitted him to exploit those children; if those children were not prepared to be exploited, there are other children prepared to go through with that. But we rejected that. Just as we have rejected unsafe working conditions.

We as a society did not believe that workers should work in conditions that were a danger to their health and well-being, that they should endure toxic gases and acids and other kinds of dangerous work conditions. The senior Senator from West Virginia described in great detail the conditions in the mines in the earlier part of this century.

We as a country have not said: Devil beware; we will permit anyone to exploit any of the workers in any kind of manner that they want to. There is always someone else to pick up the pieces. That has not been a part of the great social compact of this country and this society. We have rejected that, although there are those voices that today perhaps would like to return to that period. But I do not believe that is the view of our fellow citizens.

Mr. President, I hope that attention will be paid to the forum tomorrow in the Russell caucus room. We should listen to those individuals who will be coming down here to speak about what is really happening out there on the front line for workers.

It will be useful, I think, for Members to perhaps drop by and listen to what is really happening out there in the work force, how people are trying to make it, the problems they are facing, the conditions which have been exploiting them.

Workers in this country, at this time, are facing extraordinary challenges and burdens which were virtually unforeseen for years and years. They have been battling hard. We need to listen to them and to be reminded once again what this Executive order is really all about; that is, to provide some protection for them so that they can look to the future with a sense of hope for themselves and for their families.

Mr. President, I yield the floor.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I would like to congratulate my colleague from Massachusetts for his efforts in the course of this day to try to help Americans to focus on the increasing plight of those who labor in this country.

It is very interesting. The labor law is long established after years of extraordinary confrontation and some very difficult times. Senator BYRD was on the floor earlier this afternoon talking about some of the background of the labor movement, some of the price that was paid by people in an effort to win certain rights in the workplace.

As we think back on the history of this country, there really is not one of us as a school kid, I think, who was not moved by the images as well as the stories of some of the working conditions that grandparents, forebears, and many Members of the U.S. Senate went through.

We all remember that there was a time when child labor was exploited. We remember when there was a time when people worked in sweatshops without rights, without breaks, without the ability to even relieve themselves; we remember a time when people would be injured and there would be no compensation, no recourse. They might even lose the job as a consequence of the injury. There would be no payment.

There is such a long category or list of the ways in which human labor has

been pressed to the limit, in ways that we came to believe were considered un-American. We felt that those things were not the way people ought to live in the United States of America. Indeed, most Members of the Senate have spent time arguing about Mexican workers, arguing about workers in other countries, China, and places where workers are exploited today. Thank God, that is not the situation in the United States.

But one of the principal reasons all workers in America have made advances, particularly those today who do not have to join a union, is because a sense of responsibility has entered into the broad marketplace, where most employers now even try to preclude the creation of a union by offering a certain set of benefits—health care, compensation, time off, family leave; a whole set of things that people have come to understand are fair for people to have as they labor.

The last and only real tool available to people who are organized in the marketplace to protect their rights is the right to strike. We have a long-established set of laws in the United States by which people can strike legally, and by which they are restrained from striking illegally. We all remember what happened with PATCO when the air controllers struck in what was deemed to be an illegal strike. They were fired. They were, in the judgment of many in the United States Senate, properly replaced.

Mr. President, there is no rationale that I think can be argued legitimately except a rationale—and it is not legitimate—called union busting, which could justify saying that you would take away from people in a legal strike the right to be able to do it, to strike.

There is enormous power in the hands of employers today; enormous power. For those who are organized, in an effort to try to guarantee that they are adequately paid, that they are given the safety protections and other benefits that we have come to believe people ought to have in America, the only leverage they have in the marketplace is their right to band together and say to that employer, "We don't think we are being treated fairly."

What is the employer's recourse if that happens? The employer is not without recourse. These people cannot shut down his or her plant, or their plant. They have to leave and leave without pay. They have to leave and interrupt their lives, and start to live on the accumulated savings of a union, or those who contribute to their effort to fight for what they think is right. And the employer is permitted, under the law, to replace those people with temporary workers.

So the employer can continue to make profits. The employer can continue to sell goods. There is no disruption, other than the good workers who regularly work and the folks who know each other and the spirit of the plant and all of the good things that come with a good relationship between management and labor; there is none of that. Business is not interrupted, but there can be disruptions, though they do not stop the employer from getting a salary. They do not stop the shareholders from earning money. They do not stop the company from growing or putting out goods.

Meanwhile, people who have labored hard, more often than not under tough conditions, are out in the streets marching up and down, extraordinarily disrupted, having a hard time paying for their needs, for their kids, for their mortgage, for a car, for vacation, for clothing—in an effort to do what? To hurt the United States? To do injury? No; to try to make it, to try to get their little piece of the rock.

I wish I had with me the statistics. I do not have them. But the statistics on corporate pay increases in America relative to the increase of the average working American are shocking.

You know, from the end of World War II, right up until 1979, America grew together, all of us grew.

This chart is a stark reminder of that. This is 1950 to 1978. If you divide America up into quintiles, the lowest quintile, the bottom 20 percent, saw their personal income increase 138 percent. The next quintile went up 98 percent. The third quintile, 106 percent. The fourth quintile, 11 percent. And the top 20 percent of Americans went up 99 percent. So three quintiles grew faster than the top 20 percent in the United States.

From 1979 until 1993, look at this dramatic inversion. This is the story of the working person in America. The bottom quintile went down 17 percent. The next quintile went down 8 percent. The third quintile went down 3 percent. The fourth quintile went up 5 percent. And, Mr. President, the top 20 percent of Americans gained by 18 percent. That is the growing gap in America from 1979 to 1993.

The American worker, the average worker, the person taking home anywhere from $20,000 up to $50,000, has been going down and the person earning over $100,000 is going up.

But it is even more dramatic, Mr. President, when you look at what happened to middle-class incomes in that period, for middle-class incomes in America have gone down. The bottom 20 percent went down a 10-percent drop. The middle 20 percent went down 4 percent. Mr. President, the top 1 percent in America went up 105 percent.

There is nobody who looks at the demographics of this country who will not tell you that the gap between the working American and those who are making it and who have it is growing, and growing substantially. And here we are talking about whether or not that worker, who is increasingly hard pressed to make ends meet, is going to have the ability, in the labor-management relationship that is already significantly weighted toward management, is going to have the ability to simply hold on to the right of collective bargaining.

If you are not allowed to hold on to the right to strike—which, clearly, if you can have permanent replacement workers—you have lost, then you have wiped out the entire gain of the whole concept of collective bargaining.

Mr. President, I do not know of anything more fundamental than that. I really do not. Every single company in this country has the right to go out and hire a replacement person temporarily. So this issue is really a very fundamental one, and I think the President has appropriately offered leadership at the national level, following in the tradition of other Presidents who have issued Executive orders in order to implement a particular policy.

The record is very clear. Franklin Roosevelt, in 1941, issued an Executive order requiring defense contractors to refrain from racial discrimination.

In 1951, after the enactment of the Procurement Act, President Truman issued an Executive order extending that requirement to all Federal contractors.

In 1964, President Johnson issued an Executive order prohibiting Federal contractors from discriminating on the basis of age and, at the time, Federal law permitted such discrimination. The Civil Rights Act of 1964 merely directed the President to study the issue. But the President, rightfully, issued the Executive order.

In 1969, the Nixon administration expanded the antidiscrimination Executive order to encompass a requirement that all Federal contractors adopt affirmative action programs, something a lot of Americans do not remember, but it was President Nixon who put that program in place.

In 1978, President Carter issued an Executive order requiring all Federal contractors to comply with certain guidelines limiting the amount of wage increases. And that order had the effect of limiting what Federal contractors could agree to in collective bargaining, notwithstanding the longstanding Federal policy of encouraging free collective bargaining.

In 1992, President Bush issued an Executive order requiring unionized Federal contractors to notify their unionized employees of their right to refuse to pay union dues. The National Labor Relations Act did not require any of that. In the 101st Congress, legislation had been proposed to impose that right, but the legislation had not been passed. But the President's Executive order, President Bush's Executive order, was not subject to judicial challenge.

So I believe President Clinton's Executive order is an appropriate one under the law, under the historical precedent, and it is obviously a necessary one, Mr. President.

We have learned through the history of strikes that, in fact, a strike that involves permanent replacements actually lasts seven times longer than strikes that do not involve permanent replacements. And they tend to be much more contentious, often changing a limited dispute into a much broader and more contentious kind of struggle. So if one is really interested in good management-labor relations, and in letting the free market work, I might add, Mr. President, it is appropriate to stand by the law as it now stands, which protects the right of workers to collectively bargain.

In 1937, John L. Lewis said that, "The voice of labor insisting upon its rights should not be annoying to the ears of justice nor offensive to the conscience of the American people." And that is really what this is about—the ears of justice and the conscience of the American people, Mr. President.

I think when you look at the trendlines of what is happening, it is very clear that, if we continue down this road, probably more Americans will come together and question whether or not it is time to begin—somehow—to bargain for themselves. And I believe that the struggle for every working American family's right to a decent and safe workplace and the most fundamental right, which is to seek a redress of those grievances within the workplace, is a very hard-fought victory that deserves to be preserved in order to preserve the fabric of this country.

I do not think it is too much to ask, Mr. President, at a time when the changing economic landscape is throwing American jobs into greater and greater competition in the marketplace, that American management simply grant their fellow Americans—the people who live in their towns and make up their communities—the right to bargain for working conditions without the fear of losing their job. For anyone for whom that is the choice, it is no choice. That is very clear.

And all of us who are here for a brief period of time, and we earn so much more, significantly more, than the average American does, we should stop and think about what is it like to make that decision to walk out of a workplace in order to get those better conditions.

That is not, for anyone here who has ever talked to somebody on a picket line, an easy choice. It is not a choice without extraordinary hardship in and of itself. To be faced with the prospect of potentially never walking back into a plant, as a consequence of simply standing up to be able to bargain for the better conditions, is not to live up to the American dream. It is certainly not to respect the history of what we have all been through as a country.

I think we have a code of conduct between labor and management and a set of rules that create a fair playing field. But that fairness would be stripped away by an effort to suggest that any employer who can simply replace people who try to bargain collectively and exercise their right to strike.

I hope, Mr. President, we will remember what this is really all about. It is not as if the corporate entity of this country in the last years has not gained enormously from the measures of the U.S. Congress. I would hope that as we go forward in these next days we will remember those who are increasingly being separated from their potential to touch the American dream, let alone to provide basics for their kids.

I yield the floor.

Mr. HARKIN. Mr. President, would the Senator yield for a dialog here?

Mr. KERRY. Mr. President, I would be delighted.

Mr. HARKIN. I listened carefully earlier when the Senator was going through his charts about the decline in middle income, and the disparity in who is getting the money in our country.

I was intrigued by the charts and how up until the 1960's, I believe, or the 1970's, the Senator was showing how most people increased and advanced together. But it has only been in the last few years where the discrepancies—and where the income was going—has really shown up.

Would the Senator show that last chart, where the disparities came in? Now, this was the chart that shows from 1950 to 1978 we were all kind of growing together, if I am not mistaken.

Mr. KERRY. That is correct.

Mr. HARKIN. And it shows that we basically all increased at the same rate, no matter what income level.

Mr. KERRY. In fact, the lowest 20 percent increased the most.

Mr. HARKIN. The most.

Now, what has happened now since 1978?

Mr. KERRY. Since 1978, right up until the present, there has been a dramatic turnaround where the lower three-fifths of America are going downhill; the fourth quintile has risen marginally, about 5 percent; and the top 20 percent are the people who are really taking home the gravy.

Mr. HARKIN. So that has happened just recently.

Mr. KERRY. Since 1979; since the dramatic increase—I might add, it is a very interesting coincidence.

The year 1979 marks the period where we had a $1 trillion debt in this country. From 1980 to 1993, which represents the greatest period of diminution of earnings, we also have the greatest single period of increase of debt in America.

As I know the Senator from Iowa knows, if we separate it out—the interest payments on that debt period from the current budget—not only are we in balance, but we run a surplus.

So it is the Reagan-Bush years and Congress, too. I will not dump that one. I am tired of hearing that it is exclusively one or the other. Both were complicitous in a process of unwillingness to be fiscally responsible.

But that irresponsibility has become one of the things that is stripping away the capacity of these folks at the bottom to gain the skills necessary in the new marketplace, where information is power, and skills, or the capacity to earn income that has significantly stripped away those folks' access to those skills or to that opportunity.

Mr. HARKIN. Mr. President, I thank the Senator for going over that again, because as the Senator was going through these charts it reminded me of an article I read, from May 23, 1994, "Why America Needs Unions."

> The slide in unions has been linked to a lower level of blue-collar wages, a wider disparity in incomes, and a loss of benefits for workers.

Let me read part of this article. It is titled "Scary gap"—the gap in income.

> New research from respected economists of such schools as Harvard and Princeton shows that blue-collar wages trailed inflation in the 1980's, partly because unions represented fewer workers. The resulting drag on pay for millions of people accounts for at least 20 percent of the widening gap between rich and poor which has reached Depression-era dimensions.

A person might think this came out of some labor-management periodical. This is Business Week, May 23, 1994. I think that even responsible capitalists and responsible free enterprise publications like Business Week are beginning to understand that when we start doing away with unions and start doing away with the bargaining power of unions, we will be in for real trouble.

In fact, the article went on to say that:

> Free market economies need healthy unions. They offer a system of checks and balances, as former Labor Secretary George Shultz [a Republican] has put it, by making managers focus on employees as well as on profits and shareholders.

I think this Business Week article really buttresses what the Senator was saying in terms of the disparity in income and where it is going. I also believe that it shows that it is because of the lack of union bargaining power, because of the threat that is always held over their heads that, "Well, you got to take what management wants, or leave it; and if you leave it and go on strike, which is legal, you will be permanently replaced, and therefore you have no bargaining power anymore."

The Senator from Massachusetts has hit it right on the head. We just cannot permit this widening gap to continue.

Mr. KERRY. Mr. President, if I may point out to my colleague even further,

this is another chart which shows that more working families—working families in America, we are not talking about the poor that are so quickly bashed here in Washington today who are on welfare; the poor who are not even on welfare and do not qualify and are not working; these are working Americans—Americans who are out there paying their taxes, struggling to make it. And what is happening?

In 1975, only about 8.2 or 8.3 percent of Americans who were working families qualified as poor in America. Dramatically, beginning in 1979, that went up to about 11.4 percent. We can see the incredible increase when we went through that very dramatic period of raising the defense spending, cutting the taxes, and increasing the deficit. It started down marginally for 3 years, between 1982 to 1985. Now it is going back up, and it is higher than it was in 1980. It is now at the highest level it has been in years, that is—the number of working Americans who are poor.

What is also interesting is back in 1960, 1970, 1980, the minimum wage could lift those folks out of poverty. The minimum wage, 100 percent value of the minimum wage between 1960 and 1980, if a person were earning just the minimum wage they could be lifted out of poverty. But that is no longer the case. The trend line has been straight down since 1980, so that now, in 1995, the minimum wage will only bring a person up to a 70 percent level of the poverty line.

What we are witnessing is an increase in the difficulty of those who are working. And the folks who are working in those conditions, by and large, are not the people who do not have the need to join a union, who are working in a high-technology company or would have a benefits package that is basically geared to be fair and keep the union from growing. They are the folks who most need the union, and now they are also the folks who are finding that there is an effort to deprive them of the capacity to raise those wages to a level where they can make ends meet.

I have been, I will say to my friend from Iowa, I am not someone who has come to the floor and always pleased labor. I voted for GATT, I voted for NAFTA, and I have taken a lot of heat from friends in labor for doing it. I certainly have come to understand that there are in some practices in the marketplace, things that I object to on both sides of the fence.

But I cannot understand what it is that is so compelling in America, other than the effort to try to break the movement altogether, that suggests that it is appropriate to deprive people of the right to say that they can bargain collectively for a better effort, for a better wage, particularly given the fact that unlike the past, today's law does not shut the company down. They can bring in workers. They can keep on selling. They can keep on growing. They keep their salaries. They are not giving up anything.

So why should not that worker who has bargained—and we saw an example of this in a hospital the other day in New York where nurses went out, trying to get a contract, and some of the nurses refused to go out, and they stayed in the hospital and kept working. The patients were served. They brought in extra people. They made it work. And then they finally settled with those who had gone out and, indeed, the whole spirit of the place changes. People who are part of the fabric of that plant or endeavor come back together, they work together.

The best companies I have seen in America are companies where management brings labor into the process, where they are working closely together, where they never have a need for strikes because they are not adversarial.

Clearly, it seems to me, this effort to reduce the capacity of people to bargain simply runs counter to all of the experience of the marketplace since the robber baron days and on through the early 1900's up until the present. I do not think we can say labor law today is so stacked against management or, in fact, so balanced toward labor that there is some huge rationale that suggests that it is an appropriate moment for the U.S. Senate to join in gutting the entire history of the movement altogether.

I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, first of all, I want to thank my friend and colleague from Massachusetts for his very eloquent and, I think, on-the-mark statement regarding what is happening in this country today, as we stand here and watch unions be taken apart piece by piece around the United States.

Mr. President, I want to recap what this is all about, why we are here, and what this amendment is for those Senators who are in their offices or for viewers who may be watching on C-SPAN.

Yesterday, President Clinton issued an Executive order giving the authority to the Secretary of Labor to make a decision, to make a finding whether or not a company was permanently replacing workers who had exercised their legal right to strike. If such a finding was made, then the President would issue orders to relevant agencies of the Federal Government, to say they could no longer contract with that company in the future for any goods as long as that company persisted in hiring permanent replacements.

The amendment we have on the floor by Senator KASSEBAUM from Kansas would make that null and void by stating that through the power of the purse string in the Congress, that moneys could not be spent to enforce that Executive order. Now a cloture motion has been filed to cut off debate and bring it to a vote by Monday.

What precipitated all this? What precipitated the President of the United States in issuing such an Executive order?

It is a culmination of things, but I do not think there can be a clearer example of what brought this about than the example from my own State of Iowa, in the actions by Bridgestone/Firestone. So I am going to take the time of the Senate to walk through one of the—I was going to say saddest—one of the sickest episodes in the history of U.S. labor/management relations. I am sorry that it had to take place in my State of Iowa. I am sorry because our workers in Iowa have been good workers, loyal, productive, hardworking, and now they have been told by Bridgestone/Firestone that they can just go out on the trash heap.

We all have heard of Firestone Tire & Rubber, a well-known name in American industry. I am sure we all, at one time or another, had a Firestone tire on our car. Firestone in the 1980's was up for sale. There were a couple bidders for Firestone. One was Pirelli, an Italian-based company, which bought Armstrong Tire. The other was Bridgestone, which is a Japanese-based company.

They began bidding up the price. It is not that Firestone was bankrupt. We heard those comments earlier today. It was not bankrupt. In fact, Firestone was doing pretty well prior to that. In 1981, Firestone recorded a $121 million profit for the first 9 months. Bridgestone paid some $2.6 billion for Firestone.

In the early 1980's, Firestone began a series of actions, ratcheting down on the workers. First, they started laying off workers. Then in February 1985, they asked the workers to take a wage cut. The workers accepted a cut of $3.43 an hour. Later in 1985, Firestone asked that their property taxes be reduced from $1 million to $800,000, which was approved. So the property owners in Polk County, the county in which Firestone is located, had to make up the $200,000 through other increased property taxes.

Then in 1987, they asked union members to take another wage cut, and they did—$4 an hour. So now in the space of a little over 2 years, the workers at Firestone have taken wage and benefit cuts of $7.43 an hour.

Then in May 1987, Firestone requested some assistance from the government: $1 million from the State; $300,000 from Polk County; $100,000 from the City of Des Moines; $100,000 from Iowa Power; $50,000 from Midwest Gas. And the next month, Firestone gets all the grants from the taxpayers of the State of Iowa.

Bridgestone purchased the company for $2.6 billion, as I mentioned before, in 1988.

By 1993, the Des Moines Bridgestone/Firestone plant was profitable. They are $5 million ahead of budget.

By March of last year, the Bridgestone/Firestone plant in Des Moines set a new high record of productivity, 80.5 pounds per man-hour, and set an all-time record for pounds warehoused.

And then what happened? Last summer, when the contract came up for renewal, Bridgestone/Firestone, the employers, the management, refused to bargain with the employees.

So, left with no other recourse, the employees went out on strike. They have now been out for 8 months.

So this is not about workers who refuse to work. These workers worked hard.

Let me read a letter that I referred to earlier today from Sherrie Wallace. She wrote me this letter on January 8. She said:

When Bridgestone came to each of us asking for help because we were not doing as well as the company needed to do, we all did our best. They asked me for one more tire every day and to stay out on the floor and to forgo my clean-up time. Not only did I respond, so did each and every member of the URW.

Not only did I give them the one more tire per day, I gave them three times what they asked for. Our production levels soared. We threw ourselves into our company believing that we all must succeed together in order to create a better way of life for all. The membership joined committees and we became involved, we gave them our hearts. We began to believe this company was different. We gave them our input to create a better working environment. To increase productivity, we began to meet our production levels. We were proud of our company and our union. Together we did make a difference.

And then what did they get for it? When their contract came up for renewal, Bridgestone said, "Sorry, suckers. Too bad. Too bad you gave your all. Too bad you worked hard. Too bad you increased your productivity three times. Too bad you took $7 an hour in wage and benefit cuts in the 1970's. Too bad that your tax money gave us money so that we could become more profitable. You are a bunch of suckers. Out the door."

That is in effect what Bridgestone did. They never sat down and negotiated. Not once, not once in 8 months have the employers sat down to negotiate.

There is a report in the Des Moines Register of today: "Bridgestone/Firestone officials have not met with local union negotiators since the beginning of the record 8-month dispute."

So it is not the workers. They are willing to sit down and negotiate under the law. We are a nation of laws, are we not? We have an existing legal structure under which these workers operate. They just want to abide by the law and negotiate.

The company said, "Here are our demands. Take them or leave them."

That is not negotiation. That is not good-faith bargaining. In fact, there is a case now pending before the National Labor Relations Board that the employer, Bridgestone/Firestone, is in violation of section 8, refusal to bargain in good faith. I do not see how anybody could find otherwise because section 8 does say that both sides are required to meet at reasonable times and under reasonable circumstances to negotiate on issues of wages, hours, and conditions of employment.

So I am hopeful that very soon the NLRB, which has had this case since last October, will render a decision. I can only hope that that decision will be that Bridgestone/Firestone is in violation of the law.

Earlier today, I talked about some of the demands that they were making on the workers of Bridgestone/Firestone, about the fact that they want lower wages and longer hours for our workers here than for their workers in Japan. Bridgestone/Firestone is trying to make up for the exorbitant prices they paid for Firestone by taking it out of the workers.

It is not that Bridgestone/Firestone is not profitable. No one has stated that. They are very, very profitable as a matter of fact. In fact, this is from the Wall Street Journal talking about the strike. They said:

The eight-month strike, the longest running in the tire industry, fails to hurt the company, Bridgestone/Firestone, which reports an 11 percent jump in sales and tripled profits for 1994.

"Tripled profits for 1994." And yet they will not even sit down and negotiate with workers.

The company operates tire plants with 3,000 permanent replacements and 1,300 workers who cross picket lines and says it doesn't need any more help.

No, it does not need any more help now. It got all the help in the beginning. They got all the help in workers taking wage cuts, concession cuts. They got help from the State of Iowa and the City of Des Moines giving them money, giving them grants.

There was another strike at Pirelli/Armstrong, and they have agreed to go back to work. Pirelli has to hire workers back or face fines under a National Labor Relations Board ruling.

Well, I think that same ruling is going to come down on Bridgestone/Firestone, that they have failed to negotiate in good faith. Again, I hope that that decision will be coming soon.

Mr. President, I ask unanimous consent that the article dated March 7, 1995 appear in full in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Mar. 7, 1995]

Rubber Workers strike out in their walkout at Bridgestone/Firestone.

The eight-month strike, the longest-running in the tire industry, fails to hurt the company, which reports an 11% jump in sales and tripled profits for 1994. The company operates tire plants with 3,000 permanent replacements and 1,300 workers who cross picket lines, and says it doesn't need any more help. David Meyer, a labor expert at the University of Akron, predicts replacement workers will eventually vote to decertify the United Rubber Workers. The standoff drains the strike fund, forcing the union to stop $100-a-week checks to strikers.

The URW tries to save 1,000 jobs at Pirelli Armstrong by offering an unconditional end to the strike there. Pirelli has to hire the workers back or face fines under a National Labor Relations Board ruling. "This way," Mr. Meyer says, the union "can at least stay in the plant and fight another day."

Mr. HARKIN. The Wall Street Journal in December of this year, December 27, 1994, had a story about Bridgestone/Firestone. I am going to read some excerpts from it, and I ask unanimous consent that the entire article from the Wall Street Journal appear in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

(See exhibit 1)

Mr. HARKIN. Here is part of the article from the Wall Street Journal. It says:

When he took the wheel at Bridgestone Corp's U.S. operations 3 years ago, Japanese executive Yoichiro Kaizaki warned managers that he's a born gambler, and that he always wins. Mr. Kaizaki—who spent more time at the mahjong table than his college economics classes, a classmate says—was given bad odds for turning around the ailing U.S. operation . . .

Now, Mr. Kaizaki has cast the dice in perhaps his toughest wager yet; that he can crush a six-month-old strike at three of the company's eight U.S. tire plants, allowing Bridgestone to stand alone against a costly master contract adopted by its industry peers. Analysts think it would be tougher for the United Rubber Workers to maintain its clout in the industry if Bridgestone prevails in the strike.

That is why this is so insidious. Goodyear settled. Pirelli/Armstrong is going back to work. Dunlop, they have all signed on. They all have contracts. But now here is Bridgestone. They are saying, no, we are not going to reach an agreement. We will crush the union. We will depress our wages. And that will put Goodyear, Dunlop, and Armstrong at a competitive disadvantage. And what are they going to do? Their shareholders are going to say, "Wait a minute; we have to do the same thing they are doing." And thus you get the ratcheting down of conditions in this country. So this does not have just to do with Bridgestone. It has to do with the whole tire industry in the United States and what is going to happen to the workers there.

The 61-year-old Mr. Kaizaki isn't looking for a compromise.

Here's more from the article from the Wall Street Journal, quoting Mr.

Kaizaki: "Ending the strike is not necessary for the company if we are forced to set working conditions that kill the company."

Mr. Kaizaki says Bridgestone is racking up losses of about $10 million a month at the three striking plants.

And you would think that would bring them in, but even with that their profits tripled in 1994. So they are making big money. The real point is they do not want their workers to share in a legitimate, fair way with the increased profits they are making. That is what this is all about.

Earlier this afternoon, the senior Senator from Texas, Mr. GRAMM, said "This has to do with the right of a free people to withhold their labor and the right of the employer to hire somebody else willing to work."

That is what the Senator from Texas, who has now thrown his hat in the ring as an announced candidate for the President of the United States, said. Let me read that again. "It has to do with the right of a free people to withhold their labor and the right of the employer to hire somebody else willing to work."

Mr. President, I have a lot of cousins who work at Bridgestone/Firestone. There is not a one of them not willing to work. Many of them have worked there 20, 30 years. They want to work. And as Sherrie Wallace said in her letter to me not only do they want to work, they will work very hard. The company asked them to produce one more tire a day. She said, "I gave them three more tires a day."

Now, I am sorry. Mr. GRAMM has it wrong. They are willing to work. They are just not willing to be slaves. And we ought not to stand here and allow a company like Bridgestone/Firestone to make them slaves.

I chose my words carefully. I mean exactly what I said—these workers are like slaves, with no voice in what they are going to get as a share of the profits of that company. "Take it or leave it," from the employer. "No matter how long you have worked there, we do not care. You worked there 20 years, you give your best years to the company, we do not care. Take it or leave it, or out the door."

That is slavery, pure and simple. These people are willing to work. They want to work. They want to work under the rubric of the laws of the United States of America. These are law-abiding citizens. They are not breaking any law. If there is a law breaker it is Bridgestone, violating section 8 of the National Labor Relations Act.

And Bridgestone/Firestone cannot say that they are not hiring permanent replacements. They are hiring permanent replacements. That is exactly what they are doing. Here is a letter that was sent to Gary Sullivan, Sr., by Lamar Edwards, labor relations manager for Bridgestone.

On January 19, 1995, you did not report to work because you were on strike and you were permanently replaced.

That is what the letter says.

Please address any questions you have to the labor relations office. Lamar Edwards, Labor Relations Manager.

Not even "Sincerely." Not even "Cordially Yours."

Gary Sullivan penned a note on the letter he sent to me. He said: "This is all I am worth after 24 years of devoted and loyal service. Please continue to hang in there. We need your help."

Mr. President, 24 years Gary Sullivan gave to this plant. He worked hard; he produced a lot of tires. They did not even say thank you.

I only have one question for Bridgestone. Where is their heart? Where is their conscience? Do they not have just a little bit of compassion? Do they not have just a little bit of feeling for working people, people like Gary Sullivan or Sherrie Wallace, or all my cousins who have been working at Bridgestone/Firestone?

We are not asking the company to go broke. Profits tripled last year. They are in a great position. But what is happening is they are taking all the money for Mr. Kaizaki and his shareholders, and they are going to see how little they can pay their workers to get the production levels that they want. And they will keep squeezing them down.

That is what this is all about. That is what this is all about, pure and simple. It has to do with whether or not in the specific instance we are about here—whether or not the Federal Government will take tax dollars from Sherrie Wallace and Gary Sullivan and Richard Harkin and Martin Harkin and Edward Harkin—I can go through all my cousins who worked there; it will take me about half an hour—whether they will take their tax dollars; will our Federal Government take their tax dollars and use those tax dollars to turn around and buy tires from Bridgestone/Firestone for the U.S. Government?

The fact is we have contracts with them; there are several contracts with Bridgestone/Firestone from the Federal Government. We know of some 47 Federal contracts held by Bridgestone/Firestone nationwide, not including contracts held by the corporation's subsidiaries. With this Executive order, Bridgestone would not be able to renew over $8 million in Government contracts, $1.5 million from the Des Moines plant alone.

So will we let the Federal Government take the tax dollars of these workers and turn around and use them to buy tires from a plant that has told them, no, we will not bargain with you; we are going to permanently replace you even though you have exercised your legal right to strike? That is why I am proud of what President Clinton did. He said: No, we are not. We are not going to renew our contracts with Bridgestone/Firestone. We are not going to buy tires from that company for the Federal Government if they will not even sit down and bargain and abide by the National Labor Relations Act and bargain in good faith.

Again, I do not know where Bridgestone/Firestone gets off on this. I do not know Mr. Kaizaki. I never met the man. But I do know something. They were talking about violence. We had a couple of violent instances at the Des Moines plant, strikers who were fearful of what is going to happen to their families and their children. I want to read one letter here: There are many ways to do violence. Twelve workers at Bridgestone/Firestone were fired by the company three days before Christmas as a response to what the company referred to as "acts of violence, threats and aggressive behavior."

I do not condone physical violence and physical threats. Most of us abhor such things as they occur in labor confrontations. However, that is what company officials are counting on in this situation as they commit their own brand of violence by refusing to bargain in good faith for an end to the strike. The company is using its financial might as a club over the workers.

The management of Bridgestone/Firestone wants nothing less than complete capitulation by the members of the United Rubber Workers union. The union is trying to hang on to benefits gained over the years in legitimate negotiating processes.

It behooves the rest of us in the community to understand that what is happening out on Second Avenue in Des Moines and at the other Bridgestone/Firestone locations around the country is an attempt to further erode the rights of workers to maintain some control over their own lives, minds and bodies rather than become the de facto property of the company.

Do not be fooled by the actions of the management of Bridgestone/Firestone. It is every bit as violent (and more so) as any act of physical violence on the picket line in its destructive effects on human life—The Rev. Carlos C. Jayne.

So what Bridgestone/Firestone is doing are acts of violence, violence to decent, hard-working people, many of whom served in our military, fought in our wars; many who gave the best years of their lives; many who have sustained injuries of one form or another; many who are now in their fifties and will not be able to find work anywhere else.

And what Bridgestone is saying is it is just tough luck. We are going to throw you out on the trash heap of life.

It did not just start here. It started a long time ago. It started with other companies, but now it has reached epic proportions. Basically, what we are seeing in America today is the destruction of the working spirit, because what we are telling workers is they are like a piece of machinery. We can use you up and depreciate you down and then we can just kind of throw you out. I think it is destructive of the work

ethic. I know it is destructive of human nature. I know it has destroyed a lot of people.

I first came across something like this, when my brother Frank was working at a plant in Des Moines, Delavan Manufacturing Co., started by Mr. Delavan, right before the Second World War. During the Second World War, it grew big because it made a lot of defense articles and it continued to make a lot of defense equipment on through the years. My brother went to work there. He was a machine tool operator and worked there for 23 years.

He loved his job. He loved the plant. He loved Mr. Delavan, a man I had met myself. He had a good job. He belonged to the United Auto Workers. He was a proud union man. He worked there for 23 years. In the first 10 years he worked there, he did not miss 1 day of work and was not late once in 10 years.

I remember I came home from the service on leave one time, and at a Christmas dinner they gave him a gold watch with his name on it because in 10 years he had not missed 1 day of work and he had not been late once in 10 years.

My brother worked in that plant for 23 years. He missed 5 days of work in 23 years because of the snow conditions. We lived in a small town outside Des Moines, and he could not make it to work.

The same thing happened there as happened at Firestone. Mr. Delavan got old. He sold the company. He took care of his workers. In all of those 23 years that plant never had labor strife; they never went on strike. When the contract went up for renegotiation, Mr. Delavan would sit down with them, and they would renegotiate.

Mr. Delavan got old and sold the company to a group of investors. They bought the company. One of the leaders of this investor group bragged at a speech in Des Moines. "If you want to see how to bust a union, come to Delavan." The contract came up for negotiation. He refused to sit down and bargain.

The same thing is true at Bridgestone/Firestone. The workers went out on strike. They brought in the permanent replacements. That was the end of it.

For 23 years my brother worked there. My brother is a high school graduate. He gave the best years of his life, and worked hard. He would stay after work. No matter what they asked him to do, he would do it; 23 years.

Another part of the story I have not mentioned. My brother is disabled; he's deaf. He went to the Iowa School for the Deaf and Dumb. I remember he always said, "You know, I may be deaf but I am not dumb." But that is what they called it: The Iowa School for the Deaf and Dumb.

When he went there, they said, "You can be three things: A shoe cobbler, a printer's assistant, or a baker. It is your choice." He said, "I do not want to be any one of those." But he said, "OK. I am going to be a baker."

He got out of school and baked for a while. Then he got this great job at Delavan's. He made good money. He was a union member. He bought his own car. It was incredible. Here is a deaf man in his early twenties making decent money, bought a new car, out on his own.

You see, Mr. Delavan had gone out and hired disabled people—he was way ahead of his time—to work in his plant and found out that they made some of the best workers. When this new crowd came in and bought the plant, did they give a hoot? They did not care. The bottom line was profits. That was it. They figured it out. If they could take my brother, Frank, who had been there for 23 years and worked his way up the wage scale, if they could get rid of him, they could hire somebody else for a third less. That is exactly what they did.

I will never forget as long as I live two things my brother said to me. The one was when he said to me, "I may be deaf but I am not dumb." I will never forget that. I will never forget that after he lost his job at Delavan's, he was then 54 years old. Do you know where a 54-year-old deaf man finds a job? He got a job as a janitor working at night cleaning out the latrines.

Here is a man who for 23 years operated a nice piece of equipment. It was a drill press. As a matter of fact, he made jet engine nozzles that I used in the jets that I flew in the Navy. He was contributing to the defense of his country. He was making a good wage. He was a member of a union; highly productive; 54 years old. No one is going to hire a 54-year-old deaf man. He went and got a job as a janitor at minimum wage; no union; no benefits; no health care; no anything.

The second thing he said to me that I will never forget. He said, "I feel like that piece of machinery." Delavan had out in back a dump where they dumped all the tailings, and worn out machines. He said, "I feel like one of those pieces of machinery that they used up and they threw out."

I will tell you. When those things hit home, you never forget them. So I have been in favor of doing something about striker replacement ever since that time. It is just not right. It is not right for companies to do this to people. Not all companies do this. It started small. But now it is like a wildfire. Now they are all starting to do it. If Bridgestone/Firestone gets by with it, it will be Armstrong next and then it will be Goodyear and then it will be Dunlop and it will just keep going on because they are going to have to compete. That is what is happening in our society.

So that is what this is all about. It is not convoluted. It is not complicated. It is very simple. It is about whether or not working people in America have any dignity, whether they have any rights at all, whether we believe that people who work should have some bargaining power to bargain with their employer, or whether or not the employer can just say "take it or leave it." That is all it is about. It is nothing more than that.

Finally, it is about whether or not we in the Federal Government will permit our tax dollars to be used to help subsidize this kind of corporate greed, corporate irresponsibility.

President Clinton did the right thing, and I hope we do the right thing. I hope we defeat the Kassebaum amendment and send a strong signal to our workers that the Federal Government, at least, is not going to use their tax dollars to subsidize companies like Bridgestone/Firestone.

I yield the floor.

EXHIBIT 1

[From the Wall Street Journal, Dec. 27, 1994]

CORPORATE FOCUS: BRIDGESTONE BETS IT CAN DEFEAT RUBBER WORKERS' STRIKE—KAIZAKI TRIES TO TURN AROUND FIRESTONE BY BUCKING INDUSTRYWIDE CONTRACT

(By Valerie Reitman, Masayoshi Kanabayashi, and Raju Narisetti)

When he took the wheel at Bridgestone Corporation's U.S. operation three years ago, Japanese executive Yoichiro Kaizaki warned managers that he's a born gambler, and that he always wins.

Mr. Kaizaki—who spent more time at the mahjong table than his college economics classes, a classmate says—was given bad odds for turning around the ailing U.S. operation. So far, he has beaten them.

His aggressive restructuring, known as "risutora" in Japanese, has produced the beginning of a turnaround at rusty Firestone Tire & Rubber Co., which Bridgestone acquired for $2.6 billion in 1988. Mr. Kaizaki's performance at the U.S. operation, known as Bridgestone/Firestone Inc., led to his promotion last year to president of the Tokyo-based parent company, one of the world's largest tire makers, with $10.7 billion in tire revenue last year.

Now, Mr. Kaizaki has cast the dice in perhaps his toughest wager yet: that he can crush a six-month old strike at three of the company's eight U.S. tire plants, allowing Bridgestone to stand alone against a costly master contract adopted by its industry peers. Analysts think it would be tough for the United Rubber Workers to maintain its clout in the industry if Bridgestone prevails in the strike.

The battle is reaching a flash point: Bridgestone says it's about to replace workers permanently, while the union vows to keep Bridgestone from gutting the hard-won increases at other companies.

The outcome likely will determine whether Bridgestone's purchase of Firestone—widely considered one of the worst Japanese investments in America several years ago—will prove a durable winner. Or whether it will go down on the list that includes Sony Corp.'s purchase of Columbia Pictures and Matsushita Electric Industrial Co.'s acquisition of MCA Inc.

The strike's resolution also will stand as a verdict on the management performance of Mr. Kaizaki, who has been applying the restructuring lessons he learned in America to Japan.

When it acquired Firestone, Bridgestone instantly gained a substantial base of U.S. and European factories and sales outlets, doubling its revenue. But Mr. Kaizaki's sweeping reorganization in the U.S. including cost cuts and massive layoffs, and his attempts to boost productivity, have led to this year's strike. Bridgestone and the union are "locked in mortal combat," says William McGrath, a Cleveland tire-industry consultant.

Negotiations are at a stalemate in the strike, which has already surpassed the 141-day walkout that crippled the U.S. tire industry in 1976. Bridgestone is considering making permanent many of the temporary workers hired to replace the 4,200 strikers. Tension has erupted on racial lines, with pickets bearing placards saying "Nuke 'em" and "WWII Part II—Japan's Bridgestone Attack on American Economy."

The union wants Bridgestone to extend the same master contract adopted by U.S. tire industry bellwether Goodyear Tire & Rubber Co. The contract calls for wage and benefit increases of 16% over a three-year period from the current average of $67,000, with the average salary portion going up to $49,000 from $45,000.

Bridgestone and Mr. Kaizaki aren't budging. The company says its crushing debt load—$2 billion left over from the acquisition and subsequent capital investment, and another $500 million of off-balance-sheet debt—makes it unfeasible to accept the same agreement as its powerful rival, Goodyear. But Bridgestone contends its proposal is generous, providing average annual compensation of $63,000 when pegged to productivity improvements and 12-hour rotating shifts. The union abhors the work schedule and says it's impossible to calculate the value of the proposal, given several proposed reductions of pension and medical benefits.

The 61-year-old Mr. Kaizaki isn't looking for a compromise. "Ending the strike is not necessary for the company if we are forced to set working conditions that kill the company," he says in an interview.

Mr. Kaizaki says Bridgestone is racking up losses of about $10 million a month at the three striking plants, but that the U.S. operations overall will still earn a profit for the year. Its five other plants are operating full throttle: Union contracts there do not fall under the URW master agreement. Indeed, for the first time since Bridgestone's acquisition, the U.S. operation swung into the black with a $6 million profit last year, and another $10 million in profit is expected this year.

While the strike has forced Bridgestone to import costly tires from Japan and to fall behind in farm-tire deliveries, the betting is that Mr. Kaizaki will prevail. With the union's war chest running low and some union workers crossing pickets, "this one is an endgame," says University of Akron management Prof. Daniel Meyer. "If the URW picket lines break and a lot of those workers go back, they (URW) will still be a force, but their ability to impact in a major way would be gone"

Judging by his past record, Mr. Kaizaki isn't likely to retreat. A maverick by any standard, he particularly stands out among Japanese managers, The son of a soy-sauce brewer, built like a fireplug, the chain-smoking Mr. Kaizaki resembles the bulldog of a manager he is.

He surprised Firestone workers when he arrived in the U.S. in 1991. He admitted that he knew little about the tire business, coming from Bridgestone's chemical division, and even less about North America. Nor did he speak English. But what he did say was memorable—that he could make tough decisions because he "had a strong stomach and no problem sleeping at night," recalls Bridgestone/Firestone Inc.'s vice president, Trevor Hoskins.

The first Japanese word many Firestone workers learned when he took over was dame (pronounced DA-may), or "no good," which he often used about compromises with the union, according to Nikkei Business magazine.

Productivity assessments have been another hallmark. Mr. Kaizaki quickly divided the U.S. operation into 21 divisions, set clear goals for each manager and gave each division chief "The Buck Stops Here" placards. He says he has no second thoughts about the demands that prompted the strike, including a nonstop production cycle and tying wages to productivity.

From his U.S. vantage, Mr. Kaizaki says he could "see many defects" in the Japanese headquarters. "When I went to the U.S., the parent in Japan did not possess the ability to institute cost-cutting measures." Now, he's implementing some of his U.S. changes at the Japanese parent, putting it on a restructuring diet that he calls slim-ka, in order to offset rubber-price increases (50% this year alone), the yen's appreciation and anemic sales. He has halved management positions, established direct managerial communication lines and meted out the lowest raises in the Japanese tire industry to Bridgestone workers, still the industry's highest-paid.

The diet is working: Bridgestone just boosted its 1994 earnings forecast for Japanese operations to 21.5 billion yen ($216 million), a 26% increase from 17.05 billion yen last year.

In the interview, Mr. Kaizaki dares to say he would lay off workers at the parent if it starts losing money. Even suggesting such a possibility is radical in Japan. But, he says, "I will fire people if the company here falls into as bad a situation as Firestone was in when I was in the U.S."

Even now, he acknowledges that it will be some time before Bridgestone beats the long odds placed on its investment in Firestone. "I think it will take a long time for us to see results. We are getting on the right track, but we are still deeply hurt."

Bridgestone by the numbers—the fundamentals

	1993	1992
Sales (trillions)	1.60	1.75
Net income (billions)	28.39	28.40
Earnings per shares	36.8	36.8

Major product lines: Tires (accounting for 74.5% of total sales), wheels, industrial rubber products, chemical products, sporting goods, bicycles.

Major competitors: Group Michelin (in Europe), Goodyear Tire & Rubber (in U.S.).

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Thank you, Mr. President.

Mr. President, I want to associate myself and concur with the remarks of the Senator from Iowa, my neighbor. I, too, rise in opposition to the pending amendment.

This amendment would block the Executive order issued by President Clinton that prevents the Federal Government from contracting with employers that permanently replace legally striking employees. I strongly support the Executive order.

The time has come, Mr. President, for all of us in this body to begin to correct the significant imbalance that exists in labor law today; an imbalance that must be corrected if America is going to thrive in the increasingly competitive global marketplace.

Mr. President, under our Federal labor law, an employee cannot be fired for exercising the right to strike. Congress guaranteed that right in 1935 with the passage of the National Labor Relations Act, which told every worker that he or she had the right to organize labor unions, to bargain collectively with employers, and to strike in support of those bargaining demands.

Unfortunately, based on the Supreme Court decision in the case of NLRB v. MacKay Radio and Telegraph Company, that same employee who cannot be fired can be "permanently replaced." Mr. President, I have yet to figure out how to console an employee who just lost his or her job for going out on strike by telling her that she has not really been "fired," she has just been "permanently replaced."

The distinction makes absolutely no sense. It is newspeak. It is a distinction without a difference. Perhaps those in the Congress who oppose the President's Executive order could take a moment to explain the distinction to the Senate, the difference between being permanently replaced on a job versus being fired from that job. Or, better yet, perhaps they could take a minute to explain the difference to people like Carol Little, a former employee of the Woodstock Die Cast Co. in Woodstock, IL. I want to tell Carol's story because I think it is significant and it points to some of the issues that the Senator from Iowa raised in his eloquent statement.

In 1988, Woodstock workers went out on strike to protest severe company cutbacks. At issue were proposed reduction in wages and health care benefits, as well as complete elimination of pension benefits, all in a time when the company was making a profit.

Many strike participants had 30 and 40 years of service in the plant, and a majority had over 10 years of service. Carol Little was one of the 370 workers who went on strike as a typical Woodstock Die Cast worker. A 22-year veteran of the plant, she began working at Woodstock Die Cast in 1966.

The job made it possible for her to support her children and disabled husband, while putting a son through college. As the family's primary breadwinner, she depended on the fair wages and benefits historically provided by the Woodstock Die Co.

Within 2 days of the beginning of the strike, the company began advertising for and hiring permanent replacement

workers. The company ultimately replaced 220 of the 370 strikers.

While the union provided hardship payments to workers facing severe financial problems, a number of strikers still lost their homes. Several of the striking Woodstock Die Cast workers were forced to file for bankruptcy. In addition, the practice of replacing strikers had severe repercussions throughout the community. The stress caused by the strike and the ensuing job losses contributing to an increase in the divorce rate among former Woodstock Die Cast employees. The most poignant example of tragic personal loss, however, is that of a 26-year-old striker who, in an act of hopelessness, took his own life after his wife left him.

Fortunately, everything turned out OK for Carol Little. She was able to find another job and continue to support her family, but not everyone was as fortunate as Carol Little.

This tragic story is not unique, Mr. President. Similar stories could be told by the 85 workers replaced by Capitol Engineering in 1983; the 100 workers replaced by Calumet Steel in 1986; the 160 workers permanently replaced by Aircraft Gear Corp. in Chicago, in 1990; and the 338 members of the Chicago Beer Wholesalers Association who were permanently replaced—to cite just a few examples.

Over the last few months, the Bridgestone/Firestone Corp. has also permanently replaced several hundred workers in its plant in Decatur, IL. There is a plant in Decatur as well as Des Moines. This decision has created severe economic disruptions for working families that depend on Bridgestone/Firestone for their livelihood. It has also impacted many people and businesses throughout the Decatur area that are not directly connected with the company.

The fact of the matter is, Mr. President, that there is no difference between permanently replacing a striking worker, or firing a striking worker. As Thomas Donahue, secretary-treasurer of the AFL–CIO stated:

> Stripped of the legal niceties, the Mackay doctrine is a grant to employers of the 'right' to punish employees for doing no more than unionizing and engaging in collective bargaining. Mackay takes back a large part of the Federal labor law's broad promise to employees that they are protected against employer retaliation if they choose to exercise their freedom to associate in unions. And it does so when that promise would have the most meaning: A collective bargaining dispute. At that critical time, the Mackay doctrine sacrifices basic workers' rights in the interest of aggrandizing employer prerogatives.

Mr. President, the Senate failed to end debate on the striker replacement act last July. This legislation would have amended both the National Labor Relations Act and the Railway Labor Act by banning the permanent replacement of striking workers.

The Executive order issued yesterday by President Clinton will help us take a small, first step; toward restoring the long-standing imbalance in labor-management relations by prohibiting the Federal Government from contracting with employers that replace legally striking workers.

It does not mean that the choice that employees have will be removed from them. They can still decide if they want to avail themselves of the right to permanently replace somebody, but it does mean that taxpayers will not be a party to decisions to permanently replace workers when indeed the law that guarantees people the right to strike would have prohibited it.

Mr. President, this order represents a lawful exercise of Presidential authority. The Federal Procurement Act, enacted by Congress in 1949, expressly authorizes the President to "prescribe policies and directives, not inconsistent with the provisions of this act, as he shall deem necessary to effectuate the provisions of said act."

Republican and Democratic Presidents alike have issued Executive orders addressing the conduct of companies with which the Federal Government does business. For example, in 1941, President Roosevelt issued an Executive order which prohibited defense contractors from discriminating against individuals on the basis of race. In 1951, after enactment of the Procurement Act, President Truman—whose desk I share, by the way, Mr. President—issued an Executive order extending that requirement to all Federal contractors. When both orders were issued, such discrimination was not unlawful and, in fact, Congress had failed to enact an antidiscrimination law proposed by President Truman.

In 1964, President Johnson issued an Executive order prohibiting Federal contractors from discriminating on the basis of age. At the time, Federal law permitted such discrimination.

In 1969, President Nixon expanded the antidiscrimination Executive order by requiring all Federal contractors to adopt affirmative action programs. President Nixon did that.

In 1992, President Bush issued an Executive order requiring unionized Federal contractors to notify their unionized employees of their right to refuse to pay union dues.

Mr. President, since being elected to the Senate I have had the opportunity to speak to hundreds of workers about the issue of striker replacements throughout my State and indeed in other places, as well. The most important point that I try to make when I talk with working people is that a company's most important asset is its labor force.

This permanent replacement situation, I believe, is counterproductive in that it sets up a dynamic of mistrust and hostility between labor and management that cannot be constructive or conducive to productivity. That really breaks down the capacity of the organization to function.

Of course, every time I talk to working people, I am preaching to the choir. Telling a group of UAW members, for example, about the importance of passing legislation that would prohibit permanent striker replacements is like telling South Africans about the importance of voting. They get it right off, and they understand immediately what it means.

But I have also tried to get the same message through to members of the business community in Illinois. I hope I have been successful. America's employers have nothing to fear from President Clinton's Executive order. In the end, labor and management's interests really are the same. We are all in a global economy and we will rise or fall, sink or swim together. We are all in this together.

Mrs. BOXER. Will my colleague yield to me on that point for just a very brief comment?

Ms. MOSELEY-BRAUN. Certainly.

Mrs. BOXER. Mr. President, I really am pleased to hear the Senator talk about how important it is to have good relations between the workers and management.

I know that our Presiding Officer is a very successful business person. I know how much we think of him. We think he is one of the finest Senators, and I am sure that his workers felt the same way about him because this is a man of quality. I think that relationship is crucial.

I just wanted to put in the RECORD at this point a comment that was made by a nurse who was voted the nurse of the year in one of our great hospitals in California. There was a terrible strike going on and the nurses felt that they were really being abused in many, many ways. I will not go into all the details. It is not important here.

But what is important is that they went out on strike and within a day they were replaced. This is what she said:

> I always felt that you strike because of the issues and when you settle the issues you go back to work. You do not win every issue. You compromise. That is how we do it in America. I never thought they would replace the workers. Why would anyone ever go on strike then?

And I think that very simple message gets through to me. We need to settle our differences amicably. And if you know that you are going to be replaced the minute you withhold your labor, which is a human right, then I think it has a tremendously chilling effect.

So I am very pleased to associate myself with the Senator's remarks, the fact that I think that it is the right thing for business and for the working people and that our President did the right thing. He stood up and said, you

know, "I'm drawing a line here in the sand."

I am very sorry that we are into this on a bill that is supposed to reimburse the Pentagon for peacekeeping expenses. It seems to me very odd that the Republicans would offer such an amendment on a bill I know they want to get through. It is delaying us, but I guess that is the way it goes.

I am proud to associate myself with my colleague. I look forward to working with her on this issue.

Ms. MOSELEY-BRAUN. Thank you very much.

I thank the Senator from California for her remarks, as well.

Mr. President, I would like to address some of the incorrect statements that have been made about President Clinton's Executive order.

The President's Executive order will not encourage workers to strike, it will only restore balance to their relations with employers. It also will not prevent employers whose workers choose to strike from carrying on with their business.

A company faced with a strike has a number of options. It can hire temporary replacements. It can rely on supervisory or management personnel to complete jobs. It can transfer work to another plant, subcontract work, or stockpile in advance of a strike. In addition, the Supreme Court has long held that an employer lawfully may lock out employees as a means of controlling the time of a work stoppage and gain an advantage thereby in bargaining. The President's Executive order will not take away any of those alternatives.

All it will do, again, is keep taxpayers from being made an inadvertent, unwilling, and unexpected party to the capacity of an employer to permanently replace a worker. Again, "permanently replace"—in my mind, I would like someone to explain how that is different from firing somebody.

There are, of course, those who say that the Executive order is unnecessary, that employers are no more likely to hire permanent replacements for their workers now than they were when the Mackay decision was originally issued. The facts, however, tell another story. Since 1980, employers have made far more frequent use of permanent replacements.

In 1990, Mr. President, the General Accounting Office released a study on the use of permanent replacements by employers of labor disputes covered by the NLRA. The study covered the years 1985 to 1989. The study found that in fully one-third of the strikes examined, employers indicated they intended to hire permanent replacements. In approximately 17 percent of the strikes, employers actually did hire permanent replacements. The GAO stated that approximately 14,000 striking workers were replaced in 1985 and 14,000 more in 1989.

Of course, this figure did not cover employees covered by the Rail Labor Act, or the RLA, such as the 8,000 pilots, machinists and flight attendants replaced by Continental Airlines in 1985, or the 7,000 employees replaced by Eastern Airlines in 1989. An AFL-CIO study found 11 percent of striking workers, 126,450 individuals in all, were permanently replaced in 1990.

What we are seeing is an increase in the use of permanent replacements, and an increase in the use of this tactic by employers. Again, given the trauma that it occasioned, I daresay it cannot be in our national interests to promote or to continue.

What is even more important to realize, Mr. President, is the real issue is not ultimately how often the permanent replacement weapon is used. The truth is that the mere availability of this weapon to management distorts the collective bargaining process in many, many more labor disputes than those in which it is actually used. The mere existence of the threat, whether or not it is carried out, is enough to undermine the right to organize and to undermine workers' ability to bargain on a level playing field about the conditions of their work.

In that regard, I reference the letter that was read by the Senator from California, when the letter writer said, "If you knew you were going to get fired, why would you try?"

After 12 years of antagonism during previous administrations, the time I believe has come to forge a new direction. The time has come for labor and management to work together in this country. Our major industrial competitors including Canada, Japan, Germany, and France, have recognized that banning the permanent replacement of strikers restores balance in the collective bargaining process and makes good economic sense. The time has come for Congress to do the same.

I point out again, with regard to Bridgestone/Firestone in Decatur and Des Moines, what is happening in Decatur, and what is happening in Des Moines, is illegal in Japan. It is almost too perverse to contemplate.

America's union workers are not simply another cost to be cut. They are human beings who are often struggling to provide for their families to make ends meet. Under our Nation's labor laws they have certain rights, including the right to strike. Congress thought that we were guaranteeing that in 1935 when the NLRA was passed. Unfortunately, they were wrong. They had not counted on someone coming up with the idea that to be permanently replaced was not the same thing as being fired.

But we can guarantee that today. We can acknowledge what everyone knows to be true: That absent the right to strike without being permanently replaced, collective bargaining does not work. It cannot. It cannot if management can replace workers the minute they take to the picket lines. Workers then do not have the right to bargain. They walk around in every negotiation with a loaded gun, frankly, at their heads.

Mr. President, we are entering a new era in economic competition. All over the world, barriers to trade between nations are falling. We are witnessing the development of a truly global marketplace. I believe that America can and must lead the way in this marketplace, but if we are to succeed, if we are to retain our competitive edge into the 21st century, there must be a symbiosis between labor and management and government. That means a mutually beneficial working relationship, one of mutual respect: Labor needs jobs, workers need jobs, workers need the business to be competitive to make a profit to be able to compete. Government should be a partner of all of that.

Certainly, this issue of permanent replacement of strikers just cuts against the grain and prohibits and precludes our ability to advance ourselves and to go forward in terms of this global marketplace and the competitiveness challenges that we are facing in the world.

Mr. President, President Clinton's Executive order, I believe, is a first step in restoring the balance, the delicate balance, that will allow America to retain its competitive edge. I would, therefore, like to conclude my remarks by urging this body to oppose the pending amendment. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

THE PELL GRANT PROGRAM

Mr. PELL. Mr. President, recently, concern was expressed that the Pell Grant Program may be giving college students a free ride, and that Federal funds might be better spent by transferring funds to the College Work Study Program. Because of this, I thought it might be helpful to take a somewhat closer look at the Pell Grant Program, and place it in a more proper context regarding student aid in general and its relationship to college work study in particular. I thought it might also be good to see just how many students today have to work to help pay for their college education.

At the outset, let me make it clear that I support both of these very worthy programs. The Pell Grant Program

provides students with need the opportunity to pursue a college education that might be beyond their financial reach. The College Work Study Program often supplements the Pell Grant Program and offers deserving students the chance to help defray their educational expenses by working. Both programs are important, and both programs are essential.

I am concerned, however, that with respect to the Pell Grant Program, the impression in the public's mind might be that these students do not have to work and that their college education is being fully financed by their Pell grant. Nothing could be farther from the truth.

As my colleagues know, the Pell grant award is need-based, which means it goes only to students who demonstrate financial need. Over 75 percent of all students who receive Pell grants come from families with incomes of less than $15,000 a year, which means that the program is targeted to those students who have the greatest financial need.

In addition, it is very important that one realize that the maximum Pell grant can be no higher than $2,340, the current maximum, or 60 percent of the cost of attendance, whichever is less. Thus, in no situation does the Pell grant pay for a student's entire education. At best, it covers only 60 percent of the cost of attendance, and that in the case of those students who demonstrate the very greatest need.

Increasingly, more and more students find they must work in order to obtain the additional funds necessary to pay for a college education. A recent Washington Post article indicated that the proportion of all fulltime college students between the ages of 16 and 24 who worked to help pay for their education had increased from 35 percent in 1972 to 51 percent in 1993. And, fulltime students now work an average of 25 hours a week.

The figures for Pell grant recipients are even more dramatic. Of those who responded to a recent survey by the U.S. Department of Education, more than 75 percent of all Pell grant recipients worked and 60 percent worked while they were in school. Numerically, this means that almost 2.8 million Pell grant recipients work, and over 2.2 million must work and go to college at the same time.

I am equally concerned that there may simply not be enough hours in a day for needy and deserving students to pay for their entire education by working. One goes to college to learn. If that is to be done and done well, students must have sufficient time to study. While work may be both necessary and laudable, it should not rob students of the time they need to fulfill the academic responsibilities that led them to seek a college education in the first place.

Further, it is very doubtful that there are enough jobs in and around campus to meet the demand that would be created if the Pell Grant Program were handed over to college work study. When we reauthorized the Higher Education Act in 1992, we considered an expansion of the Work Study Program, but found that many colleges were literally stretched to the limits in terms of finding employment for their students. Thus, as worthwhile and important as the College Work Study Program is, it simply cannot meet the overwhelming needs of students.

One of the unique features of the Pell Grant Program is that it is targeted to the student and not the institution. If students demonstrate need, Pell grant funds are available to help them attend a college of their choice. Transferring that approach to the campus-based Work Study Program would change the very nature of the Pell Grant Program. Access and choice are twin features of this important program, and I am of the mind that we should not alter that approach.

The Pell Grant Program has helped literally millions of students achieve a college education that otherwise would have been beyond their reach. This year more than 3.7 million students received Pell grants, and more than 54 million grants have been made since the program began in 1973–74 school year. It is a program that has outstripped the widely popular and important GI bill on which it was modeled.

Mr. President, today we are faced with the fact that more students and families are having to go deeply into debt to pay for a college education. The number of students and families who must borrow and the amount of money they are borrowing are reaching gigantic proportions. A decade ago the anticipated new loan volume in the Guaranteed Student Loan Program was $7.9 billion with just under 3.4 million borrowers. This year the anticipated loan volume is $25.8 billion and almost 6.6 million borrowers. The number of borrowers has less than doubled, but the amount borrowed has more than tripled.

Instead of focusing concern on either the Pell Grant Program or the College Work Study Program, we should be examining with care the long-term effects of student indebtedness. Instead of a debate that would have us choose between grants or work study, we should be debating how to increase both of those programs in order to relieve students and families of the terrible debt burden they are incurring through student loans.

Mr. President, in a Congress where the size of the national debt is rightfully a major focus and where the need for a better balance between income and expenditures is absolutely necessary, we should not lose sight of the fact that this applies not only to Federal spending but also to family spending and the deficit they face in trying to pay for a college education.

In a Congress where budget cutting is a major theme, it may not be popular to suggest that the right and prudent course to follow in student aid is to increase funding in both the Pell grant and the College Work Study program. Yet, that is, to my mind, the course we should be following if, in fact, we are really, truly concerned about the debt American students and families are incurring as they invest not only in education but in their own and their Nation's future strength and well-being.

What Disraeli said of England over a century ago is surely just as true for America today: "Upon the education of our children depends the future of the nation."

COMMEMORATION OF NATIONAL SPORTSMANSHIP DAY

Mr. PELL. Mr. President, it is with great pride that I bring to the attention of my colleagues National Sportsmanship Day which was celebrated on March 7.

My pride stems from the fact that this celebration, which is recognized by the President's Council on Physical Fitness and Sports, originated as a concept of the Institute for International Sport. The institute, housed at the University of Rhode Island, has brought us the hugely successful World Scholar-Athlete Games and the soon to be held Rhode Island Scholar-Athlete Games. National Sportsmanship Day, now in its fifth year, has grown into a national and now an international movement.

National Sportsmanship day was conceived to create an awareness among the students of this country—from grade school to university level—of the importance of ethics, fair play, and sportsmanship in all facets of athletics as well as society as a whole. The need to periodically refocus our young people on sportsmanship and fair play is sadly evident on the playing field in these days of taunting, fighting, winning at all costs mentality, and the lure of huge sums of money for athletes hardly ready to cope with life's normal challenges.

To commemorate National Sportsmanship Day, the Institute for International Sport sends to all participating schools—now numbering 5,000 in all 50 States as well as a number of schools in nearly 50 countries—packets of information with instructional materials on the themes surrounding the issue of sportsmanship. Throughout the country, students are involved in discussions, writing essays, creating art work, and in other creative ways engaging each other on the subject.

The institute's nationally recognized Sports Ethics Fellows Program, which counts among its present members

Olympic gold medal skater Bonnie Blair, promotes and supports National Sportsmanship Day activities.

Mr. President, as it has in past years, the President's Council on Physical Fitness and Sports had recognized National Sportsmanship Day. I ask unanimous consent that the letter signed by the council's cochairs Florence Griffith Joyner and former Congressman Tom McMillen be printed in the RECORD following my remarks. I also urge my colleagues, Mr. President, to encourage students to focus on National Sportsmanship Day.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS,
Washington, DC, November 28, 1994.

Mr. TODD SEIDEL,
Director of National Sportsmanship Day, Institute for International Sport, University of Rhode Island, Kingston, RI.

DEAR MR. SEIDEL: The President's Council on Physical Fitness and Sports is pleased to recognize March 7, 1995, as National Sportsmanship Day. The valuable life skills and lessons that are learned by youth and adults through participation in sports cannot be overestimated.

Participation in sports makes contributions to all aspects of our lives, such as heightened awareness of the value of fair play, ethics, integrity, honesty and sportsmanship, as well as improving levels of physical fitness and health.

The Council congratulates the Institute for International Sport for its continued leadership in organizing this important day and wish you every success in your efforts to broaden participation and awareness of National Sportsmanship Day.

Sincerely,

FLORENCE GRIFFITH JOYNER,
Cochair.
TOM MCMILLEN,
Cochair.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Labor and Human Resources.

REPORT RELATIVE TO THE ATOMIC ENERGY ACT—MESSAGE FROM THE PRESIDENT—PM 31

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations.

To the Congress of the United States:

The United States has been engaged in nuclear cooperation with the European Community, now European Union, for many years. This cooperation was initiated under agreements that were concluded in 1957 and 1968 between the United States and the European Atomic Energy Community [EURATOM] and that expire December 31, 1995. Since the inception of this cooperation, EURATOM has adhered to all its obligations under those agreements.

The Nuclear Non-Proliferation Act of 1978 amended the Atomic Energy Act of 1954 to establish new nuclear export criteria, including a requirement that the United States have a right to consent to the reprocessing of fuel exported from the United States. Our present agreements for cooperation with EURATOM do not contain such a right. To avoid disrupting cooperation with EURATOM, a proviso was included in the law to enable continued cooperation until March 10, 1980, if EURATOM agreed to negotiations concerning our cooperation agreements. EURATOM agreed in 1978 to such negotiations.

The law also provides that nuclear cooperation with EURATOM can be extended on an annual basis after March 10, 1980, upon determination by the President that failure to cooperate would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security, and after notification to the Congress. President Carter made such a determination 15 years ago and signed Executive Order No. 12193, permitting nuclear cooperation with EURATOM to continue until March 10, 1981. Presidents Reagan and Bush made similar determinations and signed Executive orders each year during their terms. I signed Executive Order No. 12840 in 1993 and Executive Order No. 12903 in 1994, which extended cooperation until March 10, 1994, and March 10, 1995, respectively.

In addition to numerous informal contacts, the United States has engaged in frequent talks with EURATOM regarding the renegotiation of the U.S.-EURATOM agreements for cooperation. Talks were conducted in November 1978; September 1979; April 1980; January 1982; November 1983; March 1984; May, September, and November 1985; April and July 1986; September 1987; September and November 1988; July and December 1989; February, April, October, and December 1990; and September 1991. Formal negotiations on a new agreement were held in April, September, and December 1992; March, July, and October 1993; June, October, and December 1994; and January and February 1995. They are expected to continue.

I believe that it is essential that cooperation between the United States and EURATOM continue, and likewise, that we work closely with our allies to counter the threat of proliferation of nuclear explosives. Not only would a disruption of nuclear cooperation with EURATOM eliminate any chance of progress in our negotiations with that organization related to our agreements, it would also cause serious problems in our overall relationships. Accordingly, I have determined that failure to continue peaceful nuclear cooperation with EURATOM would be seriously prejudicial to the achievement of U.S. nonproliferation objectives and would jeopardize the common defense and security of the United States. I therefore intend to sign an Executive order to extend the waiver of the application of the relevant export criterion of the Atomic Energy Act until the current agreements expire on December 31, 1995.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 9, 1995.*

REPORT ON UNITED STATES SUPPORT FOR MEXICO—MESSAGE FROM THE PRESIDENT—PM 32

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

On January 31, 1995, I determined pursuant to 31 U.S.C. 5302(b) that the economic crisis in Mexico posed "unique and emergency circumstances" that justified the use of the Exchange Stabilization Fund [ESF] to provide loans and credits with maturities of greater than 6 months to the Government of Mexico and the Bank of Mexico. Consistent with the requirements of 31 U.S.C. 5302(b), I am hereby notifying the Congress of that determination. The congressional leadership issued a joint statement with me on January 31, 1995, in which we all agreed that such use of the ESF was a necessary and appropriate response to the Mexican financial crisis and in the United States' vital national interest.

On February 21, 1995, the Secretary of the Treasury and the Mexican Secretary of Finance and Public Credit signed four agreements that provide the framework and specific legal arrangements under which up to $20 billion in support will be made available from the ESF to the Government of Mexico and the Bank of Mexico. Under these agreements, the United States will provide three forms of support to Mexico: short-term swaps through which Mexico borrows dollars for 90 days and that can be rolled over for up to 1 year; medium-term swaps through which Mexico can borrow dollars for up to 5 years; and securities guarantees having maturities of up to 10 years.

Repayment of these loans and guarantees is backed by revenues from the export of crude oil and petroleum products formalized in an agreement signed by the United States, the Government of Mexico, and the Mexican government's oil company. In addition, as added protection in the unlikely event of default, the United States is requiring Mexico to maintain the value of the pesos it deposits with the United States in connection with the medium-term swaps. Therefore, should the rate of exchange of the peso against the U.S. dollar drop during the time the United States holds pesos, Mexico would be required to provide the United States with enough additional pesos to reflect the rate of exchange prevailing at the conclusion of the swap.

I am enclosing a Fact Sheet prepared by the Department of the Treasury that provides greater details concerning the terms of the four agreements. I am also enclosing a summary of the economic policy actions that the Government of Mexico and the Central Bank have agreed to take as a condition of receiving assistance.

The agreements we have signed with Mexico are part of a multilateral effort involving contributions from other countries and multilateral institutions. The Board of the International Monetary Fund has approved up to $17.8 billion in medium-term assistance for Mexico, subject to Mexico's meeting appropriate economic conditions. Of this amount, $7.8 billion has already been disbursed, and additional conditional assistance will become available beginning in July of this year. In addition, the Bank for International Settlements is expected to provide $10 billion in short-term assistance.

The current Mexican financial crisis is a liquidity crisis that has had a significant destabilizing effect on the exchange rate of the peso, with consequences for the overall exchange rate system. The spill-over effects of inaction in response to this crisis would be significant for other emerging market economies, particularly those in Latin America, as well as for the United States. Using the ESF to respond to this crisis is therefore plainly consistent with the purpose of 31 U.S.C. 5302(b): to give the United States the ability to take action consistent with its obligations in the International Monetary Fund to assure orderly exchange arrangements and a stable system of exchange rates.

The Mexican peso crisis erupted with such suddenness and in such magnitude as to render the usual short-term approaches to a liquidity crisis inadequate to address the problem. To resolve problems arising from Mexico's short-term debt burden, longer term solutions are necessary in order to avoid further pressure on the exchange rate of the peso. These facts present unique and emergency circumstances, and it is therefore both appropriate and necessary to make the ESF available to extend credits and loans to Mexico in excess of 6 months.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 9, 1995.*

MESSAGES FROM THE HOUSE

At 11:53 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 9. An act to create jobs, enhance wages, strengthen property rights, maintain certain economic liberties, decentralize and reduce the power of the Federal Government with respect to the States, localities, and citizens of the United States, and to increase the accountability of Federal officials.

H.R. 988. An act to reform the Federal civil justice system.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 9. An act to create jobs, enhance wages, strengthen property rights, maintain certain economic liberties, decentralize and reduce the power of the Federal Government with respect to the States, localities, and citizens of the United States, and to increase the accountability of Federal officials; to the Committee on Governmental Affairs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-480. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report on a transaction involving U.S. exports to various countries; to the Committee on Banking, Housing, and Urban Affairs.

EC-481. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report on a transaction involving U.S. exports to various countries; to the Committee on Banking, Housing, and Urban Affairs.

EC-482. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report on a transaction involving U.S. exports to various countries; to the Committee on Banking, Housing, and Urban Affairs.

EC-483. A communication from the President and Chairman of the Export-Import Bank, transmitting, pursuant to law, the report on tied aid credits; to the Committee on Banking, Housing, and Urban Affairs.

EC-484. A communication from the Secretary of Housing and Urban Development, transmitting pursuant to law, the report entitled "Effect of the 1990 Census on CDBG Program Funding"; to the Committee on Banking, Housing, and Urban Affairs.

EC-485. A communication from the Secretary of Energy, transmitting a draft of proposed legislation to provide additional flexibility for the Department of Energy's program for the disposal of spent nuclear fuel and high level radioactive waste, and for other purposes; to the Committee on Energy and Natural Resources.

EC-486. A communication from the Assistant Secretary of the Interior for Territorial and International Affairs, transmitting a draft of proposed legislation to authorize appropriations for United States insular areas, and for other purposes; to the Committee on Environment and Public Works.

EC-487. A communication from the Deputy Administrator of the General Services Administration, transmitting, pursuant to law, a report of the building project survey for Hilo, Hawaii; to the Committee on Environment and Public Works.

EC-488. A communication from the Assistant Secretary of the Interior for Policy, Management and Budget, transmitting, pursuant to law, a report relative to the progress in conducting environmental remedial action at federally owned or federally operated facilities; to the Committee on Environment and Public Works.

EC-489. A communication from the Secretary of the Treasury, transmitting the Administration's policy proposals on disaster assistance and disaster-related insurance; to the Committee on Environment and Public Works.

EC-490. A communication from the Acting Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the "Report to Congress on Abnormal Occurrences, July-September 1994"; to the Committee on Environment and Public Works.

EC-491. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, prospectuses for U.S. courthouses in Jacksonville, FL, Albany, GA, and Corpus Christi, TX; to the Committee on Environment and Public Works.

EC-492. A communication from the Fiscal Assistant Secretary of the Treasury, transmitting, pursuant to law, the report of the December 1994 issue of the Treasury Bulletin; to the Committee on Finance.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources:

Wilma A. Lewis, of the District of Columbia, to be inspector general, Department of the Interior.

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. THOMAS (for himself, Mr. NICKLES, Mr. HELMS, Mr. BURNS, Mr. LOTT, Mr. STEVENS, and Mr. KYL):

S. 518. A bill to limit the acquisition by the United States of land located in a State in which 25 percent or more of the land in that

State is owned by the United States, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE (for himself, Mr. EXON, Mr. FORD, Mr. CONRAD, Mr. DORGAN, Mr. KOHL, Mrs. FEINSTEIN, Mr. BUMPERS, Mr. ROBB, Mr. KERRY, Mr. FEINGOLD, Mr. HARKIN, Mr. REID, Mr. HOLLINGS, Mrs. BOXER, Mr. LEVIN, Mr. PRYOR, and Mr. BIDEN):

S. 519. A bill to require the Government to balance the Federal budget; to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to the order of August 4, 1977, with instructions that if one Committee reports, the other Committee have thirty days to report or be discharged.

By Mr. SHELBY:

S. 520. A bill to amend the Internal Revenue Code of 1986 to allow a refundable tax credit for adoption expenses; to the Committee on Finance.

By Ms. SNOWE:

S. 521. A bill entitled "the Small Business Enhancement Act of 1995"; to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 522. A bill to provide for a limited exemption to the hydroelectric licensing provisions of part I of the Federal Power Act for certain transmission facilities associated with the El Vado Hydroelectric Project in New Mexico; to the Committee on Energy and Natural Resources.

By Mr. BENNETT (for himself, Mr. BROWN, Mr. CAMPBELL, Mr. HATCH, and Mr. KYL):

S. 523. A bill to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. WELLSTONE (for himself, Mr. KENNEDY, Mr. REID, Mr. BRADLEY, and Mrs. MURRAY):

S. 524. A bill to prohibit insurers from denying health insurance coverage, benefits, or varying premiums based on the status of an individual as a victim of domestic violence and for other purposes; to the Committee on Labor and Human Resources.

By Mr. BAUCUS (for himself, Mr. DASCHLE, Mr. DORGAN, and Mr. PRESSLER):

S. 525. A bill to ensure equity in, and increased recreation and maximum economic benefits from, the control of the water in the Missouri River system, and for other purposes; to the Committee on Environment and Public Works.

By Mr. GREGG (for himself and Mr. BOND):

S. 526. A bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. LOTT:

S. 527. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Empress;* to the Committee on Commerce, Science, and Transportation.

S. 528. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for three vessels; to the Committee on Commerce, Science, and Transportation.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. THOMAS (for himself, Mr. NICKLES, Mr. HELMS, Mr. BURNS, Mr. LOTT, Mr. STEVENS, and Mr. KYL):

S. 518. A bill to limit the acquisition by the United States of land located in a State in which 25 percent or more of the land in that State is owned by the United States, and for other purposes; to the Committee on Energy and Natural Resources.

THE NO-NET-LOSS OF PRIVATE LANDS ACT

Mr. THOMAS. Mr. President, I rise today to introduce a bill, the No-Net-Loss of Private Lands Act.

Mr. President, this is a bill that I think is a commonsense approach that would begin to slow and halt the Federal Government's continual land acquisition in the public land States.

This is an issue that is peculiar to the West; peculiar to public land States. As you know, as the original States grew at the Mississippi River and beyond, as the States came into the Union, they acquired all the lands that lay within their States. They even went into private ownership, or in fact belonged to the State. Those kinds of things that were of public interest, such as parks and forests and others, were withdrawn later by the Government for a particular use. I certainly support that idea.

In the West, however, it was handled differently. There was a period of time for homestead, and much of the public land was taken up. But there were incentives to take it up. However, the West is peculiar. The arid States are peculiar in that the lands pretty much rely on the water. They rely on the feed for livestock.

So lands that were not taken up were left after the homestead time was over. These were simply lands that were there when all the private ownership was done.

So they were managed by the Federal Government. And in fact, the organic act of the land management agencies indicated that they would be held prior to pending disposal. The fact is, to make a long story short, there was no disposal, and that they are now permanently managed by the Federal Government.

The Federal Government continues in addition to that to acquire substantial amounts of land throughout the Nation in every State. I think people are saying it is time to slow or stop the growth of the Federal Government in its land ownership and to limit its ever-increasing impact on our lives.

In my State of Wyoming, approximately 50 percent of the surface belongs to the Federal Government, and more, as a matter of fact, in the subsurface in the State. But when half of your State belongs to the Federal Government and is managed by Federal land managers, then your economic future depends a great deal upon how the management takes place and what happens in those lands.

Other Western States have an even higher percentage of Federal ownership. For example, in Idaho it is 61 percent; Utah, 63 percent; and, in Nevada, nearly 85 percent of that State is owned and managed by the Federal Government.

Unfortunately, particularly, in recent years, as the economies begin to grow, the Federal Government has not always been a good neighbor to the people of the West. The Federal land management agencies continue to make it more difficult, and continue to lock up vast amounts of land in the West.

We are not talking here in multiple use of parks or wilderness. We are talking about lands that have been set aside for multiple use and the Federal Government—and particularly this administration—has made it increasingly difficult to use these lands as multiple use for timber harvest, for grazing, and for mining. All these uses, many of which are compatible ones with another, play a very important part, of course, in our economy. So there has indeed and continues to be a "war in the West."

Just yesterday we had some hearings to talk about domestic energy. One of the issues that certainly is a part of that is the difficulty of access to public lands for exploration and production of minerals. It has been almost a deathblow to the domestic oil industry in the West.

Recently, the General Accounting Office released a report detailing the growth of the amount of lands and found that over the last 3 decades the Federal land ownership has increased dramatically. In the fiscal year 1994 alone, the Federal land management agencies acquired an additional 203,000 acres of land in the United States.

These increases, of course, were a result of expansion to the forests or wildlife refuges or national parks. I have no objection to that. As a matter of fact, when there is a reason to acquire lands for a public purpose that is determined through the process, I have no problem with it.

The purpose of this bill is to say that in States where more than 25 percent of the surface is owned by the Federal Government and when additional lands are acquired, there should be lands of equal value disposed; a fairly simple concept, and I think a fairly fair concept. It is particularly, of course, appropriate only for the West, only with those States with more than 25 percent.

It seems to me it is a fairness issue. It puts the West in sort of the same position as the rest of the States. It is an equity issue. It certainly is an issue of economics for us.

So I am very pleased to introduce this bill. I have a number of cosponsors. I urge my colleagues to take a look at this bill and see if they think there is fairness causing the Federal Government through trades or sales to dispose of lands of equal value to additional lands that are acquired.

It is time for the Federal Government to take a look at itself. Of course, that is what this whole Congress has been about; making some fundamental changes in Government in terms of the size of Government, in terms of the cost of the Government, and in terms of shifting those things—that can be managed better in the private sector or by the States—back to the private sector and to the States. This bill is consistent with that view.

Mr. LOTT. Mr. President. I am pleased to join Senator THOMAS in introducing legislation which will limit land acquisition by the Federal Government. Very simply, it makes no sense for the Federal Government, with all of its financial problems, to continue buying land that it can not afford to properly manage.

On the contrary, the Federal Government should be examining its current land holdings for possible sale prospects. I am sure there are many instances where the Government bought land over 100 years ago to support a program or policy which is no longer valid in today's society. Here is where Senator THOMAS' bill will ask the question: why do we still have the land? Under this legislation, a review would occur prior to any land purchase to maintain a no-net-gain public lands policy. This analysis will permit the identification of land to be sold to compensate for the piece considered for purchase. It will also answer that important question.

This legislation applies only to States in which the Federal Government currently controls more than 25 percent of the land. This approach focuses a legislative solution where the problem is the greatest. It avoids that one-size-fits-all mentality which existed in past Congresses.

Presently, there are 13 States in which the Federal Government already owns and controls over a fourth of the land. You could call these States Federal colonies. They are virtual hostages to Federal policies and to the Washington bureaucrats who dominate the States' economies by their whims and agenda.

Fortunately, Mississippi's public lands percentage is under 5 percent. That does not mean I do not appreciate the problem. I became a cosponsor because Federal intrusion into local jurisdictional matters is pervasive.

Every State must have the ability to sustain a viable growing economy and to manage its natural resources. How can a State or local municipality function when out of the blue, a Federal policy can override legitimate local concerns? We saw that happen last year with regard to a questionable agenda concerning grazing fees.

Let's talk numbers because they will illustrate the magnitude of the Federal Government's appetite. There are roughly 2 billion acres in the United States, of which the Government already owns about 650 million acres. When this patchwork of Government ownership is consolidated, it translates into a land mass equal to the size of 11 Southern States starting with Virginia and stretching around the gulf to Texas and going north to Arkansas and Kentucky. And we still need more. In addition to the South, you would have to add the west coast from California through Oregon and half of Washington is required to equal the size of the land area controlled by the Federal Government.

That's over one-fourth of the United States, and if that is not enough, the Federal Government continues on a buying frenzy. Just last year, it claimed over 7 million more acres of land. That represents an area larger than the State of Maryland. I do not think anyone can dispute the fact that this Federal land policy needs to be reviewed and put on a diet. The Thomas legislation provides a responsible first step. It merely tries to stabilize the growth.

When you visualize the extent of Federal ownership, several questions come to mind. Why does the Federal Government need so much land? Is it all really needed? Will the sky fall if this Government stops buying up more private land?

Beyond Federal land gluttony, what is even more disturbing is how poorly the Federal Government manages these lands. For the Government to take land on the premise that it will do a better job conserving the land, ignores reality. There is ample evidence that private lands are far better managed ecologically than Government lands.

A review of the budgets for just two Federal agencies responsible for land management reveals they are funded only to a level to perform custodial care. Ordinarily, I would be sympathetic to their desire for more funds for land management improvements, but these same agencies are the ones who seek to acquire more and more land. The Bureau of Land Management and the National Park Service just can not say no. Rather than use their budget to manage and husband natural resources already in their care; they are out shopping for more land. They have become the Nation's largest absentee landlord. Evidently, their agenda is to take as much private land as possible with no real intention to manage it wisely.

Today, Senator THOMAS is offering a win-win legislative solution. The Federal Government gets a maintenance diet, and the States get a chance to chart their own destiny without fear of more Government intrusion.

Let me be clear about this: Federal holdings take land off local tax rolls, causing the property tax base to shrink and tax rates to rise commensurately for those who remain. This only gets worse as more and more land is taken.

Let me be even more candid: A growing Federal presence is increasingly perceived as an oppressive Federal occupation. In most instances, the Federal Government is not necessarily a good neighbor.

Our Founding Fathers deeply believed in individual rights. That includes freedom of speech and religion; and the right for Americans to own property. Unfortunately, today it looks as if the Federal Government believes it must own and control the land, rather than individual Americans. Senator THOMAS has provided us an opportunity to stop this policy and restore our country to what our Founding Fathers envisioned.

I thank my colleagues for their consideration, and I hope they will examine this worthwhile legislation.

By Mr. DASCHLE (for himself, Mr. EXON, Mr. FORD, Mr. CONRAD, Mr. DORGAN, Mr. KOHL, Mrs. FEINSTEIN, Mr. BUMPERS, Mr. ROBB, Mr. KERRY, Mr. FEINGOLD, Mr. HARKIN, Mr. REID, Mr. HOLLINGS, Mrs. BOXER, Mr. LEVIN, Mr. PRYOR, and Mr. BIDEN):

S. 519. A bill to require the Government to balance the Federal budget; to the Committee on the Budget and the Committee on Governmental Affairs, pursuant to the order of August 4, 1977, with instructions that if one committee reports, the other committee have 30 days to report or be charged.

THE BALANCED BUDGET ACT OF 1995

Mr. DASCHLE. Mr. President, I wish to thank the distinguished Senator from North Dakota for his comments this morning. I have respected the leadership of Senator CONRAD on this issue, as I have of the distinguished Senator from Montana.

Mr. President, a number of Senators have been developing for some time a bill that we are introducing today that would put our money where our mouth is when it comes to making the tough decisions on the budget that we all know must be made.

Over the course of the last several weeks, we have had a vigorous debate about the advisability, the practicality, and the prudence, of a balanced budget amendment to the U.S. Constitution.

As everyone knows, by a very close vote, the Senate has decided, at least for now, that there will not be a constitutional amendment to balance the budget. But no one should interpret that to mean there will not be an effort

to reduce the deficit, or that we will not continue on the progress that we have made in the past 3 years on getting the deficit under control. We intend to continue deficit reduction further than it has come to this point. We want to balance the budget by a date certain without relying on the Social Security trust funds.

We made good progress. We have reduced the deficit, now, by 40 percent from what it was just 3 years ago. It has been a long time since the Senate and the Congress has done that. The last time Washington has reduced the deficit 3 years in a row was during the time of Harry Truman. So we have come a long way. We have made some very tough choices. We made tough choices with regard to both revenue as well as cuts in 1990. We made very tough choices, and on another very close vote, passed a $600 billion deficit reduction package in 1993.

We have come this far as a result of those very tough choices, choices for which a lot of Members took a lot of political heat. We can say, perhaps somewhat boastfully, that because of those tough choices, our country is stronger today. Because of those tough choices, we have actually been able to make real progress in meaningful deficit reduction.

We need another effort just like that this year. The only change that I hope we can make is that in 1993, unfortunately, it became a very partisan choice, the Republicans versus Democrats. I hope this year, given the tremendous burden we all must share in coming to grips with this deficit, that it does not have to be partisan; that it indeed will be a bipartisan effort at deficit reduction; that we could put the next installment on deficit reduction into place now in 1995.

So the bill that we are introducing, Mr. President, will do just that. It says very fundamentally three things. First and foremost, that we shall reduce the deficit to zero by the year 2002, or at the earliest possible date set by the Budget Committee.

Our view is that unless we have a time certain, it is really impossible to develop the necessary blueprint to get us from here to there. Recognizing that we have $1.8 trillion of deficit reduction decisionmaking ahead of us, there is no way we can come to grips with it and do all that we must to do it right unless we take it in installments year after year, recognizing that each year has to be a downpayment.

So that is the provision in our bill: to set a date certain, either 2002 or the earliest date set by the Budget Committee.

The second provision is one that we have talked a good deal about: protecting Social Security. I said the deficit over the course of the next 7 years will be $1.8 trillion more if we do nothing. That is our goal. It would be $1.2 trillion if we were to use the Social Security trust funds to finance the deficit. Many of us feel that using Social Security trust funds to pay for other government programs is wrong. There is a designated purpose for those trust funds, and we do not want to play games with trust fund dollars or with the revenue that would be required to meet the obligations we have to workers who will need the trust funds to retire in future years.

So our view is to take Social Security off the table, to recognize the magnitude of the problem for what it really is—$1.8 trillion—and to begin making the effort to balance the budget, as we know we must.

The third, and an equally important element in this budget package, is one which simply says this must be the Congress to start this effort. This must be the Congress to begin making the headway and leading the way to ensure that future Congresses do what we know we must do. We cannot delegate the responsibility to future Congresses, it has to be this one now, this year, this session of Congress. And so our bill makes that point very clear.

Our bill provides for a budgetary point of order—a requirement that 60 Senators must vote to overturn—against any reported budget resolution that does not balance the budget by a date certain.

So, Mr. President, there has been a lot of discussion, a lot of debate, and a lot of strongly held feelings about how we get from here to there. I believe the time has come for us to put aside the rhetoric, to get down to the real hard decisionmaking that we all must do if we are going to accomplish this in a successful way.

In 23 days' time, the Budget Committee is required—by law—to produce a budget blueprint. In 38 days, Congress must approve a plan. We stand ready to work with our Republican colleagues to craft a plan that meets the goals set out in the bill we are introducing today. We hope they will support this bill.

Mr. President, the Social Security trust funds are the only Federal funds that are explicitly excluded from the deficit calculations under this bill. That is because, as I have said, the surplus revenues building up in those trust funds—amounting to $705 billion between now and 2002—would otherwise be raided to balance the budget.

Just as we are determined to protect Social Security, this bill would force Congress to set national priorities as we balance the budget. As we engage in that process, we need to protect those who need our help. Cutting back on meals for schoolchildren, as some are proposing, is not what proponents of this bill have in mind. Neither would we support cutting back on benefits to veterans with service-connected disabilities.

The debate should be about priorities. We must balance the budget, and we must do it in a way that strengthens the economy and that is fair.

I am very pleased that so many of my colleagues have joined me in cosponsoring this bill. Many of them are on the floor this morning to participate in this colloquy. I yield the floor at this time to accommodate the other statements.

Mr. President, I ask that the time that I have just used be taken from my leader time. And I ask unanimous consent that the full 30 minutes under my control be made available to my colleagues.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. With that, I yield to the distinguished Senator from North Dakota, and I designate the distinguished Senator from North Dakota as the manager of the time.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I yield myself such time as I may consume.

The discussion by Senator DASCHLE, the minority leader, is about an initiative that would give this Congress a procedure to try to reduce the Federal budget deficit and reach a balanced budget. All of us understand that changing the Constitution will not change the budget deficit. That requires specific actions by the Congress.

We finished a battle last week that was a bruising debate, a battle on the question of should the U.S. Constitution be amended to require a balanced budget. That proposition would have had 75 or 80 votes had it included a provision that said the Social Security trust funds will not be used to balance the budget. But that provision was voted down, and, therefore, the amendment itself lost.

But the question is not whether there is a constitutional amendment. The question is whether we will balance the Federal budget. We have proposed today a process by which we hope Republicans and Democrats can join together to say it is up to us now together to balance the Federal budget.

I said yesterday I had watched ESPN 1 day just very briefly and they were showing a bodybuilding contest. The announcer, in announcing this bodybuilding contest, said something kind of interesting that I thought applied to Congress as well. He said, "You know, there's a difference in the skills a bodybuilder uses between when he poses and when he lifts," because in this contest they were posing. He said, "That requires a different skill than lifting."

It occurred to me that that is a perfect description of what happens here. Some are skillful posers and do no lifting at all. The question at the moment is not how do we pose on the issue of a

balanced budget, the question is how will we all decide to lift together to cut the spending, to do the things necessary in a real way to balance the Federal budget.

So we propose that by statute we require that as a Congress we complete a budget that includes a specific plan to bring the deficit down to zero by the year 2002, without raiding the Social Security trust funds. No one need force us to do that. It is our job to do that.

We propose a 60-vote point of order against any budget that would come to the floor of the Senate that does not do that. We propose to set up a supermajority against legislation that would fail to do exactly what everyone in this Chamber says we want to do, and that is require a budget plan to balance the Federal budget by the year 2002.

That is real medicine. That is not in the sweet by-and-by. That is not posing. That is deciding on a process that will require real lifting.

Everyone in this Chamber understands, or should, that what happened in 1993 probably will not happen again. We won by one vote a $500 billion reduction in the Federal deficit over 5 years. It turned out to be a $600 billion reduction in the accumulated deficits. We carried that by one vote because one side of the aisle decided they would help lift, the other side did not. That probably will not happen again.

The only way we can achieve progress toward a goal the American people want and a goal the American people know this country needs is if every one of us, all of us—Republicans and Democrats, conservatives and liberals—decide our goal is 2002, our responsibility is a budget plan that is real and enforceable and our determination, our grim determination is to get there and to do that. This legislation establishes a process that will accomplish that.

The question then for Members of the Senate is not a question of posing anymore. It is a question of who is going to join together to be involved in helping balance the budget in a real way.

I hope that in the coming days, we will decide as a Senate to adopt this process, which was proposed by the minority leader and I hope will be embraced on a bipartisan basis. The minority leader is saying that we share a common goal and we will come together for a common purpose. We will legislate in a manner that gives this country a balanced budget by the year 2002. No excuses. No raiding the Social Security trust funds. No dishonest budgeting. If we do that, this country will have been well served by all of us working together for a change, and I think that will strengthen America.

Mr. President, I yield the floor and I yield 3 minutes to the Senator from Wisconsin, Senator KOHL.

Mr. KOHL. I thank the Senator. Mr. President, I rise today to offer my support for the Democratic leadership's balanced budget legislation. This legislation says two things: First, the only budget that Congress should consider is one that contains a plan that will bring us into balance; and second, in bringing our budget into balance, Congress should protect Social Security.

Though there is disagreement on whether we need a constitutional amendment to balance the budget, there are few who think that we should not be moving toward that goal. And though a few want Social Security on the budget cutting table, a large majority believe that we ought to balance the budget without using the Social Security trust fund. And so I do not see why the legislation that we are talking about today should not gain a huge majority vote in the U.S. Senate.

Anyone who voted for the balanced budget amendment, as I did, and anyone who believes that we should not balance the budget using Social Security, as I do, should clearly support this legislation. The American people are tired of hearing us endlessly debate the idea of a balanced budget. They want to see us do something to get there. If that means changing our rules so we cannot consider a budget that is out of balance, then we ought to change our rules. And if that means Democrats and Republicans sitting down together to map out the hard cuts we need to make, then we ought to sit down together. But make no mistake, we will be held accountable if we let our work toward a balanced budget end with the defeat of the balanced budget amendment. I voted for the balanced budget amendment even though it would not take effect for years because I believe that it is imperative we get our Nation's fiscal affairs in order. I support this legislation because it does something right now to force Congress into balancing the budget.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 519

Be it enacted in the Senate and the House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Balanced Budget Act of 1995".

SEC. 2. ENFORCEMENT OF A BALANCED BUDGET.

(a) PURPOSE.—The Congress declares it essential that the Congress—

(1) require that the Government balance the Federal budget without counting the surpluses of the Social Security trust funds;

(2) set forth with specificity in the first session of the 104th Congress the policies that achieving such a balanced budget would require; and

(3) enforce through the congressional budget process the requirement to achieve a balanced Federal budget.

(b) POINT OF ORDER AGAINST BUDGET RESOLUTIONS THAT FAIL TO SET FORTH A GLIDE PATH TO A BALANCED BUDGET.—Section 301 of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new subsection:

"(j) CONGRESSIONAL ENFORCEMENT OF A BALANCED BUDGET.—

"(1) POINT OF ORDER.—It shall not be in order to consider any concurrent resolution on the budget (or amendment, motion, or conference report thereon) unless that resolution—

"(A) sets forth a fiscal year (by 2002 or the earliest possible fiscal year) in which, for the budget as defined by section 13301 of the Budget Enforcement Act of 1990 (excluding the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust fund), the level of outlays for that fiscal year or any subsequent fiscal year does not exceed the level of revenues for that fiscal year;

"(B) sets forth appropriate levels for all items described in subsection (a)(1) through (7) for all fiscal years through and including the fiscal year described in paragraph (A);

"(C) includes specific reconciliation instructions under section 310 to carry out any assumption of either—

"(i) reductions in direct spending, or

"(ii) increases in revenues.

"(3) NO AMENDMENT WITHOUT THREE-FIFTHS VOTE IN THE SENATE.—It shall not be in order in the Senate or the House of Representatives to consider any bill, resolution, amendment, motion, or conference report that would amend or otherwise supersede this section.".

(c) REQUIREMENT FOR 60 VOTES TO WAIVE OR APPEAL IN THE SENATE.—Section 904 of the Congressional Budget Act of 1974 is amended by inserting "301(j)," after "301(i)," in both places that it appears.

(d) SUSPENSION IN THE EVENT OF WAR OR CONGRESSIONALLY DECLARED LOW GROWTH.—Section 258(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by inserting "301(j)," after "sections".

Mr. BUMPERS. Mr. President, I rise today to join my colleagues in introducing the Balanced Budget Act of 1995. It is my understanding that this proposal will be offered as an amendment on legislation the Senate will be considering shortly. I look forward to working with my colleagues to pass this legislation to put the Federal Government on a path toward a balanced budget.

The proposal we are introducing today contains elements of an amendment Senator EXON, the distinguished ranking Democrat on the Budget Committee, offered when the Senate considered the congressional accountability bill, and an amendment I offered during Senate consideration of the constitutional balanced budget amendment. In my opinion this proposal is one of the most sensible ideas ever presented to this body. It is sensible because it is more likely to actually achieve a balanced Federal budget than the amendment to the Constitution considered by the Senate last week and secondly because this proposal is statutory in nature, and thus would not trivialize the Constitution with an unenforceable amendment.

The proposal we are introducing today would set the Federal budget on a glide path toward being balanced beginning this year. What this means is that, rather than waiting 7 years before acting, as the constitutional balanced budget amendment provided for, the Congress would have to begin reducing the deficit this year. Under this glide path the Federal budget deficit would be lower every year between now and 2002, when the budget presumably would be balanced.

If the Budget Committee were to report a budget resolution that did not set us on a glide path toward a balanced budget or that failed to achieve a balanced budget by the targeted date, any Member of this body could raise a point of order. It would take 60 votes to overcome this point of order. In comparison, the constitutional balanced budget amendment failed to provide an enforcement mechanism. If Congress failed to achieve a balanced budget, nothing would happen unless Congress passed legislation permitting the courts to enforce the amendment—a result most proponents of the amendment said would not occur.

When I offered my amendment as an alternative to the constitutional amendment, Senator HATCH, the distinguished manager of House Joint Resolution 1, pointed out that statutory budget restrictions don't work because they can be overcome by a simple majority vote. However, Senator HATCH failed to note that my amendment required 60 votes in order to modify or repeal the balanced budget requirement. The very same 60 votes that would have nullified the balanced budget requirement of the constitutional amendment. The Balanced Budget Act of 1995, which we are introducing today, contains the very same 60 vote requirement before changes could be made.

The proposal we are introducing today is also far superior to the constitutional amendment because it addresses some of the very legitimate concerns expressed by Senators during the debate on House Joint Resolution 1. For instance, unlike the constitutional amendment, the Social Security trust fund would not be able to be used to mask the deficit. When we say the budget is balanced, it will really be balanced.

In addition, our proposal would prevent a minority of Senators from sending this country into an economic tailspin. Congress could suspend the balanced budget requirement by passing a joint resolution in a fiscal year which CBO identified a period of low-growth—at least 2 consecutive quarters of below zero real economic growth. The constitutional amendment, in comparison, would have allowed 41 Senators to stop any effort by the Government to prevent a depression through stimulus spending.

Mr. President, the people of this country do not expect miracles. They expect us to be sensible, and they expect us to keep faith with them in their demands to get our deficit under control. The beauty of the proposal we are offering today is that we can both achieve a balanced federal budget and save our sacred organic law called the Constitution of the United States, which every single one of us held up our hand to protect, preserve, and defend when we were sworn into the Senate. That did not just mean to protect the Constitution and all the rights it provides for the people of this country; it also meant protecting it against trivialization and politicization.

There have been over 11,000 efforts to amend the Constitution since this country was founded. Think of it, 11,000. And because of the eminent good sense of the Congress and people of this country, we have only amended the Constitution on 18 separate occasions, and that includes the Bill of Rights, which was adopted at the same time the Constitution was.

The only time we have ever attempted to put social policy into the Constitution was Prohibition. We found out that you can say as an amendment to the Constitution everybody will love the Lord, but you cannot enforce that. You should not put things that are unenforceable into the Constitution.

Mr. President, I ask unanimous consent I be permitted to proceed for 3 more minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. Mr. President, since last week's vote on the balanced budget amendment I have received calls and letters from people saying, "Senator, you are going to be in big trouble if you run for reelection in 1998." My response is far better that I be in political trouble than the Nation be in big trouble by starting down the path of putting every single whim and caprice that somebody can come up with in some national magazine in the Constitution.

The people in this body who do not want the issue for political purposes but who really want a balanced budget are not only going to support the Balanced Budget Act of 1995 when the Senate considers the proposal, they are going to support it strongly, because it has teeth and it requires action immediately.

The people in this country are not interested in all the partisan bickering that has taken place in Congress. When it comes to the deficit, they expect the people of this body to hold hands and work together.

I made a chamber of commerce speech the other night. I said the beauty of our system is that while you may not like our politics, the truth of the matter is that we agree on a lot more things than we disagree on.

The people on that side of the aisle and the people on this side of the aisle get awfully partisan, almost personal at times. But the truth of the matter is where the country is at risk we join hands. And every day in the world, we agree on a lot more things than we do not agree on.

Mr. President, if there ever was a time when the American people have a legitimate demand that we join hands and agree on something, it is this deficit. And the proposal we are introducing today does what the American people want and it does not tinker or clutter our Constitution.

I yield the floor.

Mr. FORD. Mr. President, it is always good to listen to my distinguished friend from Arkansas. He tells it like it is, and I think we all enjoy his remarks and the manner in which he expresses his convictions. It is very difficult for some of us in this Chamber to be as eloquent as he is. We are no less sincere than he is, but his sincerity can be put in a way that communicates with all of us.

During the debate over the balanced budget amendment, our colleagues from the other side of the aisle put forth grand sounding resolutions about how they would balance the budget by a date certain without using the Social Security trust fund to do it. That was all well and good, and many Democrats voted in favor of the honorable sounding proposals. The problem is, they did not do anything. Those sense-of-the-Senate resolutions, you know, had no teeth. We could vote for that, go back home, pound our chests and say we voted for it, but it did not mean anything. It had no enforcement provisions.

Yesterday, several of our colleagues, those who voted for the constitutional amendment and those who voted against the amendment passing this Chamber—but all with the same goal, the same end, and that is a balanced budget—said let us start eliminating the deficit, get to paying off the debt. As the Senator from Arkansas said, we all want the same thing and the way to get there is here and now. It is not later. We can do it today.

So our colleagues yesterday held a press conference. We put forth what I feel is a real budget balancing piece of legislation. This proposal replaces words with action. It calls for a 60-vote point of order on any budget resolution that comes before this body that does not lead to a balanced budget by a certain date. This point, a certain date, is important. It may be difficult to get there. But we need, as the Senator from Arkansas said, to tell our constituents that we are making an honest effort. I have heard my colleagues on the other side say, and in the press,

making speeches back in their home States: I have never supported a tax increase in my political career. But now, if we pass this balanced budget amendment, I will start considering tax increases.

That tells this Senator—and it does not take a brain surgeon to understand it, I do not think—they want a gun to their head to balance the budget. Otherwise, they are not going to do it. They are not going to lean on this amendment to the Constitution to be that gun to their head to start helping.

You can hear a lot of things, but in 1993, when it was a tough vote and the hide was coming off politically, we stood here without a Republican; 50 of us voted, and the Vice President of the United States broke that tie. We reduced the deficit over $600 billion, and we did it without any help of those who proposed a constitutional amendment. That proves that the body can, with a capital C—do it.

Now, all we have to say is let us get down to it; pass this amendment and say every year, every year, every year the deficit has to be less than it was the year before.

With or without a balanced budget amendment to the Constitution, Mr. President, we the Congress must still act to implement it. We have the power to achieve the desired goal right now. We do not have to wait until 38 States ratify an amendment. We do not have to wait until 2005, if they do not ratify it until 2003. We can start right now.

So let us use that power that the people placed in our hands. Our proposal would force this action—and I underscore force this action. If the constitutional amendment would force that Republican who made the speech, that he would now consider increased taxes if you have the balanced budget amendment in the Constitution, why do we not have the intestinal fortitude to do it now?

Our proposal would force this action and get on the path to what we all want. As the Senator from Arkansas said, we all agree on more things than we disagree on. Already this morning, I have seen reports that suggested our colleagues from the other side of the aisle have already labeled our actions that we took yesterday and are attempting to take here as just another political ploy—just another political ploy.

Vote for this amendment and see if it is a political ploy. See if we do not start on the right path to get a balanced budget. And we will come closer by this action today, or tomorrow, than we would have had we voted for a balanced budget amendment and waited for the States to ratify it. Try us. That is all I ask. If you think this is a political ploy: Try us. Vote for it and see what happens.

I hope they do not mean this, that it is a political ploy. I truly believe that this amendment will do what everybody in this Chamber talks about but we do not have the right kind of action on, such action as this is, to achieve a balanced budget. If they do not join us in this effort, we will never get to a balanced budget. This can be the most political of all actions, trying to take the issue—trying to take the issue.

I said last evening that before the vote in the hearts of some of those on the other side of the aisle, and at the national committee, they hope it fails because they want the issue. Boy, it did not take 24 hours to find out they wanted that issue. I want to tell you. My phone calls are still the same. They are still better than 50 percent. If you count the votes, you win by better than 50 percent. You do not lose. So I am still getting more thanking me than those saying you are out of here. They are going to get a chance, I guess, to tell me more in the next few years. But let us not take the issue. Let us take the action. The action is necessary to actually balance the budget.

So if this is a political ploy, I say again, Mr. President, try us. Vote for this amendment. Let us start doing something right and leave Social Security alone. I was here in 1983. We made a hard decision then. I think it would have been very, very tough on any of us to vote in 1983 to say in 12 years we are going to take this tax that we are taking out of the pockets of the employees and the employers to pay for foreign aid and welfare, and to attempt to do all these other things.

So, Mr. President, I hope that all our colleagues will join on this and not say that it is just anther political ploy.

By Mr. SHELBY:

S. 520. A bill to amend the Internal Revenue Code of 1986 to allow a refundable tax credit for adoption expenses; to the Committee on Finance.

THE ADOPTION ASSISTANCE FOR FAMILIES ACT

• Mr. SHELBY. Mr. President, today I am introducing a bill to help strengthen the role of the family in America. With the hustle and bustle of the world today, we sometimes overlook simple, commonsense ways to help one another. My bill, entitled "Adoption Assistance for Families Act," would effectively find homes for children who need parents and find children for parents who need families. Mr. President, the objective of my legislation is to provide an appropriate and reasonable incentive to encourage a policy which should be embraced by all Americans.

Adoption is a positive action that benefits everyone involved. Obviously, a loving, caring family is the primary benefit of adoption. Studies show the child also receives a strong self identity, positive psychological health and a tendency of financial well-being.

On the other hand, parents who adopt children also benefit. They receive the joy and responsibility of raising a child as well as the love and respect only a child can give. The emotional fulfillment of raising children clearly contribute to the fullness of life.

Lastly, do not forget society. Society is unambiguously better off as a result of adoption. Statistics show time and again that children with families intact are more likely to become productive members of society than children without both parents.

Unfortunately more times than not, a financial barrier stands in the way of otherwise qualified parents-to-be. The monthly costs of supporting the child is not the hurdle, but instead the initial outlay. Many people may not realize, but there are many fees and costs involved with adopting a child. These include: maternity home care, normal prenatal and hospital care for the mother and child, preadoption foster care for the infant, home study fees, and legal fees. These costs can range anywhere from about $13,000 to $36,000 according to the National Council for Adoption.

Just like the person who wants to buy a home, but cannot because the financial hurdle of a downpayment stops them, so are the parents-to-be who cannot adopt a child because of the substantial initial fees, fees that could actually exceed the cost of a downpayment for a house. As a result, the benefits to everyone involved never materialize; children do not receive loving parents and married couples are prohibited from welcoming children into their compassionate family.

My bill seeks to address this problem. The Adoption Assistance for Families Act would allow a $5,000 refundable tax credit for adoption expenses. This credit would be fully available to any individual with an income up to $60,000 and phased out up to an income of $100,000.

I believe this tax credit will go a long way in helping children find the caring homes they so desperately need. This legislation would undeniably benefit children, parents, and society as a whole. Mr. President, I hope my colleagues will join me in reaching out to families in order to provide a better, brighter future for our children and a heightened degree of appreciation for the potential life holds.

Mr. President, I urge my colleagues to support this legislation.•

By Ms. SNOWE:

S. 521. A bill entitled "the Small Business Enhancement Act of 1995"; to the Committee on Finance.

THE SMALL BUSINESS ENHANCEMENT ACT OF 1995

• Ms. SNOWE. Mr. President, I introduce a package of legislation to meet the needs of America's small businesses. The legislation I am introducing today will help these small businesses by extending a tax deduction for health care coverage, requiring an estimate of the cost of bills on small businesses before Congresses passes those

costs, and assign an Assistant U.S. Trade Representative for Small Business.

In order to create jobs both in my home State of Maine and across America, we must nurture small businesses, because small business is the engine of our economy. Businesses with fewer than 10 employees make up more than 85 percent of Maine's jobs, and nationally, small businesses employ 54 percent of the private work force. In 1993, small businesses created an estimated 71 percent of the 1.9 million new jobs. When we call small business the "engine" of our economy, we mean it: and America's small businesses are jump-starting our economy.

Small businesses are the most successful tool for job creation that we have. They provide two-thirds of the initial job opportunities in this country, and are the original—and finest—job training program. Unfortunately, as much as small businesses help our own economy—and the Federal Government—by creating jobs and building economic growth, Government too often gets in the way. Instead of fueling small business, Government too often stalls our small business efforts.

Government regulations and redtape add up to more than a billion hours of paperwork time by small businesses each year, according to the Small Business Administration. Moreover, because of the size of some of the largest American corporations, U.S. commerce officials too often devote a disproportionate amount of time to the needs and jobs in corporate America rather than in small businesses.

My legislation will address three aspects of our Nation's laws on small businesses, and I hope it will both encourage small business expansion and fuel job creation.

First, this legislation will allow self-employed small businessmen and women to fully deduct their health care costs for income tax purposes. This provision will place these entrepreneurs on equal footing with larger companies by eliminating a provision in current law that limits deductions to 25 percent of the overall cost. In addition, the legislation makes the tax deduction permanent. At a time when America is facing challenges to its health care system, and the Federal Government is seeking remedies to the problem of uninsured citizens, this provision will help self-employed business people to afford health insurance without imposing a costly and unnecessary mandate.

From investors to start-up businesses, self-employed workers make up an important and vibrant part of the small business sector—and too often they are forgotten in providing benefits and assistance. Indeed, 11 percent of uninsured workers in America are self-employed. By extending tax credits for health insurance to an these small businesses, we will help to provide health care coverage to millions of Americans.

I am pleased that the Committee on Ways and Means in the U.S. House of Representatives has decided to report out a bill restoring the 25-percent tax deduction retroactively. This decision will allow self-employed small business people to deduct health care costs on their 1994 tax returns. I can think of no better incentive for small businesses than a positive action of this nature.

Earlier this month, I joined 74 of my colleagues in writing to the Senate leadership urging quick consideration of this issue once it is transmitted to the Senate from the other body. I remain committed to working with the leadership to restore this crucial provision.

My legislation will also require a cost analysis of legislative proposals before new requirements are passed on to small business. Too often, Congress passes well-intended programs that shift the costs of programs to small businesses. The proposal will ensure that these unintended consequences are not passed along to small businesses. According to the U.S. Small Business Administration, small business owners spend at least 1 billion hours a year preparing Government forms, at an annual cost that exceeds $100 billion. Before we place yet another obstacle in the path of small business job creation, we should understand the costs our plans will impose on small businesses.

The legislation will require the Director of the Congressional Budget Office to prepare for each committee an analysis of the costs to small businesses that would be incurred in carrying out proposals contained in new legislation. This cost analysis will include an estimate of costs incurred in carrying out the bill or resolution for a 4-year period, as well as an estimate of the portion of these costs that would be borne by small businesses. This provision will allow us to fully consider the impact of our actions on small businesses—and through careful planning, we will succeed in avoiding unintended costs.

Finally, this legislation will direct the U.S. Trade Representative to establish a position of Assistant U.S. Trade Representative for Small Business. The Office of the U.S. Trade Representative is overburdened, and too often overlooks the needs of small business. The new Assistant U.S. Trade Representative will promote exports by small businesses and work to remove foreign impediments to these exports.

Mr. President, I am convinced that this legislation will truly assist small businesses, resulting not only in additional entrepreneurial opportunities but especially in new jobs. I urge my colleagues to join me in supporting this legislation.●

By Mr. BENNETT (for himself, Mr. BROWN, Mr. CAMPBELL, Mr. HATCH, and Mr. KYL):

S. 523. A bill to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes; to the Committee on Energy and Natural Resources.

THE COLORADO RIVER BASIN SALINITY CONTROL ACT AMENDMENTS ACT OF 1995

Mr. BENNETT. Mr. President, I rise to introduce legislation which will amend the Colorado River Basin Salinity Control Act and authorize additional measures to carry out the salinity program. During the last session of Congress, this noncontroversial bill passed the Senate Energy Committee; however, the legislation was stalled in a log jam in the closing days of the session. I am hopeful we will be able to move this bill early in this session of Congress.

The Colorado River Basin Salinity Control Program has been authorized by Congress and implemented by Federal and State entities for the last 20 years. There is now a need to update and revise the authorizations provided for in the Colorado River Basin Salinity Control Act so that the Bureau of Reclamation [Reclamation] can move ahead in a more responsive and cost-effective way with the portion of the program which Reclamation is responsible for administering. The following statement provides general background as to the purposes and legislative history of the Salinity Control Act and the identified reforms necessary to the act.

BACKGROUND

In the 1960's and early 1970's, rising salinity levels in the Lower Colorado River caused great concern because of damages inflicted by salt dissolved in the water. This damage was occurring in the United States and Mexico. In 1972, with the passage of the Clean Water Act, it was apparent that water quality standards needed to be adopted in the United States, and a plan of implementation to meet those water quality standards needed to be identified. The U.S. Environmental Protection Agency [EPA] published water quality standards for the Colorado River. The United States modified the treaty with Mexico to add to the United States commitments a water quality parameter.

The Colorado River Basin States were involved in many of the discussions with respect to both the Mexico commitment and the water quality standards. Through the formation of a Colorado River Basin Salinity Control Forum, the States became collectively and formally involved in discussions with Federal representatives concerning the quality of the Colorado River.

At the urging and with the cooperation of the basin States and the State

Department in 1974, the Colorado River Basin Salinity Control Act was enacted by Congress. That authority became formally known as Public Law 93-320 (88 Stat. 266), the Colorado River Basin Salinity Control Act. That act consisted of two titles. Title I addressed the United States commitment to Mexico, and title II addressed the authorization for programs above Imperial Dam to help control the water quality in the river for the benefit of users in the United States.

The amendments now being proposed in this legislation are exclusively related to title II authorizations. Title I has not been amended since the original enactment in 1974. Title II has received minor modifications as authorities were given to Reclamation to consider salinity control implementation strategies in some additional areas of the Colorado River Basin. More importantly, title II was amended in 1984 by Public Law 98-569 (98 Stat. 2933). The 1984 amendments provided for a formally constituted U.S. Department of Agriculture [USDA] program within the Salinity Control Act. The amendments gave additional responsibilities to the U.S. Bureau of Land Management [BLM] to seek cost-effective salinity control strategies. The amendments further described the basin States' cost-sharing responsibilities with respect to the USDA program, and further increased the cost-sharing requirements of the basin States with respect to newly authorized and implemented Reclamation programs.

NEEDED REFORMS

The Colorado River Basin Salinity Control Forum [Forum] has perceived for some period of time the need for amendments to the authorization relating to Reclamation's program. It has been felt by the States that the program has, at times, been encumbered by formalities imposed by Reclamation and the authorizing legislation which related to procedures Reclamation used in implementing major water development projects in decades past. It is felt that authorization which would allow Reclamation to avoid some of these encumbrances and move more expediently and cost effectively to the best salinity control opportunities would ensure compliance with the water quality standards of the Colorado River, and this compliance could be accomplished at less cost.

There is a need to allow Reclamation to consider salinity control strategy implementation in three geographic areas where planning documents have been prepared and cost-effective salinity control strategies have been identified. In the past, for Reclamation to implement salinity strategies in new areas, formal approval by Congress has been required. It is viewed that this is encumbering.

Further, it is felt that Reclamation needs flexibility so that it might move to opportunities with the private sector to cost-share, offer grants, and/or allow the private sector, rather than the Federal Government to contract for the expenditure of appropriated funds. In this manner the limited dollars would not be partially lost through expenses which have been directly identified with the use of Federal procurement procedures.

Last, Reclamation was authorized a ceiling expenditure in 1974 by Congress. After two decades, the funds expended are approaching the authorized ceiling. It is believed that it would be more appropriate for a $75 million authorization provision to be placed on the program. This will allow the salinity program to move forward for approximately 3 to 5 years at proposed spending levels.

The Salinity Forum believes that legislative reform for the Reclamation program would be tailored after authorities given to the USDA by the Congress in 1984. The inspector general for the Department of the Interior released findings in 1993. Those findings are incorporated in a document entitled, "Audit Report, Implementation of the Colorado River Basin Salinity Control Program, Bureau of Reclamation", March 1993. The above legislation proposals are in keeping with the recommendations of the inspector general.

Last year, Reclamation sent out a broad-based mailing to affected parties and interest groups asking for recommendations concerning the need for potential future efforts by Reclamation with respect to salinity control. Further, Reclamation asked for input as to how the program might possibly be reformulated. The responses received by Reclamation are in keeping with this legislation, and it is my understanding that the Bureau of Reclamation is expected to support this legislation again this year.

To that end, I appreciate the excellent working relationship that has existed between my office, the Commissioner's Office of the Bureau of Reclamation, and the Colorado River Basin Salinity Control Forum.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 523

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BASINWIDE SALINITY CONTROL PROGRAM FOR THE COLORADO RIVER BASIN.

(a) AUTHORIZATION TO CONSTRUCT, OPERATE, AND MAINTAIN A BASINWIDE SALINITY CONTROL PROGRAM.—Section 202 of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by striking "the following salinity control units" and inserting "the following salinity control units and salinity control program"; and

(ii) by striking the period at the end and inserting a colon; and

(B) by adding at the end the following:

"(6) SALINITY CONTROL PROGRAM.—

"(A) IN GENERAL.—The Secretary, acting through the Commissioner of Reclamation, shall implement a basinwide salinity control program.

"(B) CONTRACTS AND OTHER VEHICLES.—The Secretary may carry out this paragraph directly, or may enter into contracts and memoranda of agreement, or make grants, commitments for grants, or advances of funds to non-Federal entities, under such terms and conditions as the Secretary considers to be appropriate.

"(C) COST-EFFECTIVE MEASURES.—The salinity control program shall consist of cost-effective measures and associated works to reduce salinity from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources, as the Secretary considers to be appropriate.

"(D) MITIGATION.—The salinity control program shall provide for the mitigation of incidental fish and wildlife resources that are lost as a result of the measures and associated works described in subparagraph (C).

"(E) PLANNING REPORT.—The Secretary shall submit a planning report concerning the salinity control program to the appropriate committees of Congress.

"(F) The Secretary may not expend funds for any measure or associated work described in subparagraph (C) before the expiration of a 30-day period beginning on the date on which the Secretary submits a planning report under subparagraph (E)."; and

(2) in subsection (b)(4) by striking "and (5)" and inserting "(5), and (6)".

(b) ALLOCATION OF COSTS.—Section 205(a) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1595(a)) is amended—

(1) in paragraph (1) by striking "authorized by sections 202(a) (4) and (5)" and inserting "authorized by section 202(a) (4), (5), and (6)"; and

(2) in paragraph (4)(i) by striking "sections 202(a) (4) and (5)" each place it appears and inserting "section 202(a) (4), (5), and (6)".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 208 of the Colorado River Basin Salinity Control Act (43 U.S.C. 1598) is amended by adding at the end the following new subsection:

"(c) ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts authorized to be appropriated under subsection (b), there are authorized to be appropriated—

"(1) such sums as are necessary to pay for nonfederally financed salinity control; and

"(2) $75,000,000 for the construction of federally financed improvements described in section 202(a).".

By Mr. WELLSTONE (for himself, Mr. KENNEDY, Mr. REID, Mr. BRADLEY, and Mrs. MURRAY):

S. 524. A bill to prohibit insurers from denying health insurance coverage, benefits, or varying premiums based on the status of an individual as a victim of domestic violence and for other purposes; to the Committee on Labor and Human Resources.

THE VICTIMS OF ABUSE ACCESS TO HEALTH INSURANCE ACT

Mr. WELLSTONE. Mr. President today I am introducing the Victims of

Abuse Access to Health Insurance Act. This bill would outlaw the practice of denying health insurance coverage to victims of domestic violence.

In Minnesota three insurance companies denied health insurance to an entire women's shelter because "as a battered women's program we were high risk." The women's shelter in Rochester was told that it was considered uninsurable because its employees are almost all battered women.

A woman sought the services of Women House in St. Cloud because the abuse during her 12-year marriage had escalated to such an extent that she was hospitalized for a broken jaw and spent 2 weeks in a mental health unit of a hospital. She was subsequently denied coverage by two insurance companies—one said they would not cover any medical or psychiatric problems that could be related to the past abuse.

These are just a couple examples of women who have been physically abused and sought proper medical care only to be turned away by insurance companies who say they are too high of a risk to insure.

Victims of domestic violence are being denied health insurance coverage. This is a abhorrent practice. It is plain old-fashioned discrimination. It is profoundly unjust and wrong. And, it is the worst of blaming the victim.

We must treat domestic violence as the crime that it is—not as voluntary risky behavior that can be easily changed and not as a pre-existing condition. Insurance company policies that deny coverage to victims only serve to perpetuate the myth that the victims are somehow responsible for their abuse.

Domestic violence is the single largest threat to women's health. Denying women access to much needed health care must be stopped.

The Victims of Abuse Access to Health Insurance Act is a very simple and straightforward bill. It would prohibit insurance companies from "engaging in a practice that has the effect of denying, canceling, or limiting health insurance coverage or health benefits, or establishing, increasing or varying the premium charged for the coverage or benefits" for victims of domestic violence.

It would prohibit insurance companies from considering domestic violence as a preexisting condition. Under the bill, domestic violence is defined as any violent act against a current or former member of the family or household, or someone with whom there has been or is an intimate relationship. This could mean spouse, partner, lover, boyfriend, or children. If an insurance company, or even a company that is large enough to self-insure, violates this act it could be held civilly and criminally liable.

Reporting domestic violence and seeking medical help is often the first step in ending the cycle. Oftentimes health care providers are the first, and sometimes the only, professionals in a position to recognize violence in their patient's lives. Battered women should be encouraged to seek medical help. We should not be discouraging this by allowing insurance companies to use this information against them. Women should not have to fear that when they take that first step they could lose their access to treatment.

Doctors and other health care providers need to be encouraged to properly diagnose, treat, and document domestic violence. Denial of health insurance coverage will cause doctors not to document it accurately if only to protect the victim.

Domestic violence is the leading cause of injury to women, more common than auto accidents, muggings, and rapes by a stranger combined. It is the No. 1 reason women go to emergency rooms. And research indicates that violence against women escalates during pregnancy.

Last year during the health care reform debate, I raised this issue in the context of requiring insurance companies to make insurance available to all people who wanted it. We should certainly all be moving toward that goal. However, this is a real immediate need and it must be addressed.

Last year Congress passed the first most comprehensive package of legislation to address gender based violence—the Violence Against Women Act. It was a great step forward in stopping the cycle of violence. But, it is not enough. We cannot stop at reforming and improving the judicial system and think it will solve the problem. The entire community must be involved in the solution—we all must be involved in stopping the cycle of violence.

Insurance companies should not be allowed to discriminate against anyone for being a victim of domestic violence. This is an abhorrent practice and should be prohibited.

I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 524

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 "Victims of Abuse Access to Health Insurance Act".

SEC. 2. PROHIBITION OF HEALTH INSURANCE DISCRIMINATION RELATING TO VICTIMS OF CERTAIN CRIMES.

(a) IN GENERAL.—No insurer may engage in a practice that has the effect of denying, canceling, or limiting health insurance coverage or health benefits, or establishing, increasing, or varying the premium charged for the coverage or benefits—

(1) to or for an individual on the basis that the individual is, has been, or may be the victim of domestic violence; or

(2) to or for a group or employer on the basis that the group includes or the employer employs, or provides or subsidizes insurance for, an individual described in paragraph (1).

(b) PRE-EXISTING CONDITIONS.—

(1) IN GENERAL.—A health benefit plan may not consider a condition or injury that occurred as a result of domestic violence as a pre-existing condition.

(2) PREEXISTING CONDITION.—As used in paragraph (1), the term "preexisting condition" means, with respect to coverage under a health benefit plan, a condition which was diagnosed, or which was treated, prior to the first date of such coverage (without regard to any waiting period).

SEC. 3. CIVIL AND CRIMINAL REMEDIES AND PENALTIES.

(a) IN GENERAL.—Whoever violates the provisions of this Act shall be—

(1) subject to a fine in an amount provided for under title 18, United States Code, for a class A misdemeanor not resulting in death;

(2) subject to the imposition of a civil monetary penalty; and

(3) subject to the commencement by the aggrieved party of a civil action under subsection (b).

(b) CIVIL REMEDIES.—

(1) IN GENERAL.—Any individual aggrieved by reason of the conduct prohibited in this Act may commence a civil action for the relief set forth in paragraph (2).

(2) RELIEF.—In any action under paragraph (1), the court may award appropriate relief, including temporary, preliminary, or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for plaintiffs attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

(3) CONCURRENT JURISDICTION.—Both Federal and State courts shall have concurrent jurisdiction over actions brought pursuant to this section.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) DOMESTIC VIOLENCE.—The term "domestic violence" means the occurrence of one or more of the following acts between household or family (including in-laws or extended family) members, spouses or former spouses, or individuals engaged in or formerly engaged in a sexually intimate relationship:

(A) Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury, rape, assault, sexual assault, or involuntary sexual intercourse.

(B) Knowingly engaging in a course of conduct or repeatedly committing acts toward another individual, including following the individual, without proper authority, under circumstances that place the individual in reasonable fear of bodily injury.

(C) Subjecting another to false imprisonment.

(2) INSURER.—

(A) IN GENERAL.—The term "insurer" means a health benefit plan, a health care provider, an entity that self-insures, or a Federal or State agency or entity that conducts activities related to the protection of public health.

(B) HEALTH BENEFIT PLAN.—The term "health benefit plan" means any public or private entity or program that provides for payments for health care, including—

(i) a group health plan (as defined in section 607 of the Employee Retirement Income

Security Act of 1974) or a multiple employer welfare arrangement (as defined in section 3(40) of such Act) that provides health benefits;

(ii) any other health insurance arrangement, including any arrangement consisting of a hospital or medical expense incurred policy or certificate, hospital or medical service plan contract, or health maintenance organization subscriber contract;

(iii) workers' compensation or similar insurance to the extent that it relates to workers' compensation medical benefits (as defined by the Secretary of Health and Human Services); and

(iv) automobile medical insurance to the extent that it relates to medical benefits (as defined by the Secretary of Health and Human Services).

SEC. 5. INAPPLICABILITY OF MCCARRAN-FERGUSON ACT.

For purposes of section 2(b) of the Act of March 9, 1945 (15 U.S.C. 1012(b); commonly known as the McCarran-Ferguson Act), this Act shall be considered to specifically relate to the business of insurance.

SEC. 6. REGULATIONS.

The Secretary of Health and Human Services shall issue regulations to carry out this Act.

SEC. 7. EFFECTIVE DATE.

This Act shall take effect 90 days after the date of the enactment of this Act.

Mr. KENNEDY. Mr. President, I strongly support the Victims of Abuse Access to Health Insurance Act, and I commend Senator WELLSTONE for introducing it. This needed legislation will prohibit insurers from denying health insurance coverage, benefits, or premiums to victims of domestic abuse. Enactment of this measure is an essential step in the struggle to combat domestic violence and to assist women and children who are its victims.

Violence against women has reached epidemic proportions. Nationwide a woman is beaten every 18 seconds. A woman is raped every 5 minutes. More than 1 million women across the country are victims of reported crimes of domestic violence; 3 million more such crimes go unreported.

Last year, as part of the omnibus crime bill, Congress passed the Violence Against Women Act. In doing so, we established new Federal penalties for spouse abusers, provided a civil rights cause of action for gender-motivated crimes of violence, and authorized funds for services for victims, including victim counselors, battered women's shelters, rape crisis centers, and a national domestic violence toll-free hotline.

By enacting that law, Congress made a strong commitment to do more to help the victims of domestic violence. We encouraged them to report their abusers, and to seek assistance. We gave them new means to help them protect themselves. And now, with this legislation, we must tell them that they will not be denied health insurance for doing what is necessary to protect themselves and their children.

Insurance companies that refuse to cover battered women commit an injustice to those women and to society. Denial of health insurance to victims of domestic violence is discrimination against women and children. It is another way to blame and punish the victim, while letting the abuser go free. Allowing this discrimination tacitly endorses it—and endorses the myth that victims of domestic abuse are responsible for the violence committed against them.

Denying such insurance also discourages victims of domestic abuse from reporting the crimes against them and from leaving their abusers and seeking help. It discourages victims from seeking medical treatment for injuries inflicted by their abusers. For countless Americans, health insurance is the only realistic means of obtaining access to health care. The loss of health care for themselves and their children is enough to intimidate many victims into staying in abusive environments and keeping silent.

We must not condone any practice which makes it harder for women to leave their abusers or deters them from reporting the crimes against them and their children. We must not condone any practice which punishes women for seeking medical treatment for themselves and their children, for seeking safety from violence, or for speaking out against the crimes committed against them. I urge my colleagues to support this legislation, and I look forward to working with my colleagues to promote its passage.

By Mr. BAUCUS (for himself, Mr. DASCHLE, Mr. DORGAN, and Mr. PRESSLER):

S. 525. A bill to ensure equity in, and increased recreation and maximum economic benefits from, the control of the water in the Missouri River system, and for other purposes; to the Committee on Environment and Public Works.

THE MISSOURI RIVER WATER CONTROL EQUITY ACT

Mr. BAUCUS. Mr. President, I will not speak for the full 25 minutes; it will be 10 or 15 minutes. I thank the Chair for recognizing me. Mr. President, I rise this morning with my colleagues from North Dakota and South Dakota to discuss the Army Corps of Engineers and particularly the Missouri River system.

We are here today to make our side of the story known on what is called the Preferred Alternative to the Missouri River Master Water Control Manual. That sounds very technical, but it is really about the heart and soul of our State of Montana. Let me explain.

MONTANA AND THE MISSOURI RIVER

It is difficult to describe what the Missouri River means to Montana. People across the country may be familiar with the writer Norman Maclean's book "A River Runs Through It." He grew up in Missoula, and the title refers to the Big Blackfoot on the western side of the Divide. But for so many of us growing up east of the Continental Divide, the river is the Missouri.

This river was part of our life before we became a State. Our attachment to Missouri began eight decades before statehood, when Lewis and Clark came up in their boats way back in 1805.

I grew up in the Helena Valley. My parents and friends—my friends and I, in particular, spent our summers swimming in Holter Lake by my family's ranch on the Missouri. Sometimes in Hauser Lake, sometimes Canyon Ferry. Is it impossible to imagine Montana without lie on the Missouri River.

The Missouri is where farmers get water for their crops; where ranchers take their stock to drink; where sportsmen take the weekend to go rafting or fishing. It comes up through Broadwater and Lewis and Clark Counties, Great Falls, and Fort Benton, and runs all the way through the State to the Fort Peck Dam and the North Dakota line.

So when people at the Army Corps of Engineers headquarters in Washington, DC, or St. Louis, or Omaha, decide how high the reservoirs will be, how much water we will have for irrigation, or whether we can dock our boats at Fort Peck, it is an emotional, important decision that affects us.

THE 1987–92 DROUGHT

That would be true even if they at corps made good decisions. but up to now, most of the decisions have not been good. They have been bad—very bad.

We were hit by a big drought a few years ago that lasted 6 years, from 1987 to 1992. During most of that drought, the corps did absolutely nothing to help us out. It stuck like a leech to the status quo. Everything for irrigation down river, almost nothing for recreation up river. One drawdown after another—drawdown during a drought—when we had no rain to refill our reservoirs.

Our lake levels fell dramatically. At Fort Peck, the lake shore receded until it was more than a mile from many boat ramps. Weeds were growing in fields by the docks. This picture to my left will give you an idea of the wreckage. At that point, I and other Montanans decided we had enough, we were not going to take any more. We needed the corps to go back to the book and make basic changes.

TRADITIONAL CORPS MANAGEMENT MISTAKEN

Well, why did the corps allow this disaster to take place? Because the corps has traditionally given the maximum preference to barge traffic down river, which makes no sense.

According to the corps' own numbers, navigation is worth only about $15 million a year. Many experts think even that is too high. Recreation and tourism, according to the corps' own numbers, bring in much more—about $77

million annually, which is five times the value of navigation.

For years, the corps said the law required this approach. They said, that is the law, you have to do it. But again, the corps is wrong—dead wrong.

As the General Accounting Office testified at a hearing I held in Glendive, MT, last year:

> Contrary to what the Corps believed, Federal statutes do not require the Corps to give recreation a lower priority than other project purposes—flood control, navigation, irrigation, and the generation of hydroelectric power—in major decisions about water releases.

NEW MASTER MANUAL IS INADEQUATE

For years, I urged the corps to update its operating plan for the Missouri River. The draft of the new preferred alternative operating plan is a step in the right direction.

But I am sorry to say it is not good enough. It is not much more than a rehash of the status quo. It continues to give recreation the lowest priority, even though recreation yields the most economic benefits. It ignores the need to raise permanent reservoir levels, and it ignores erosion below Fort Peck Dam. Let me examine these issues one by one.

DISPROPORTIONATE BENEFITS FOR LOWER BASIN STATES

The first is simple fairness.

The four upper basin States receive about $358 million, or 32 percent of the benefits, from river management. Lower basin States get $756 million, or 68 percent of benefits. As for Montana, we receive only about 4 percent—not even a nickel of each dollar—of all of the economic benefits of the Missouri River system. The preferred alternative will not change that.

As you can see from this chart, it will mean that 32 percent for the upper basin States and 68 percent for the lower basin States. That is the allocation; no change, which is obviously unfair.

RECREATION TOO LOW A PRIORITY

Second, the corps still values navigation over recreation. That is backwards. Navigation is worth only 1 percent of the river system's economic benefits. One percent. Recreation brings in more. It is more than just pleasure boating, it is jobs. Recreation is therefore more valuable to the country, and it should be a much higher priority.

As I mentioned earlier, recreation benefits, overall, are five times navigation benefits. The corps undervalued recreation in its Master Manual Review. According to the corps, the average visitor to a corps reservoir spends about $7 a day. But the Sports Fishing Institute found that the amount spent for walleye fishing, for example, is $45 a day. And at Fort Peck, the average was $69 a day. The corps' figures do not add up.

MINIMUM POOL LEVEL MUST BE HIGHER

Third, the new plan does not change reservoir levels. The minimum pool level, below which the corps will not release water in a drought, is now 18 million acre-feet. At that level, weeds grow on the bed of Fort Peck Reservoir. Boat ramps are high and dry a mile from shore. Under the preferred alternative, the minimum pool level is still 18 million acre-feet.

The right level should be 44 million acre-feet. The master manual environmental impact statement prepared by the corps states that 44 million—not 18—44 million acre-feet yields the greatest economic benefit to the Missouri basin States. Repeating that, 44 million acre-feet yields the greatest economic benefit to the Missouri basin States. Specifically, it adds $1.28 million to the regional economy.

As you can see from the chart on my left, those numbers speak for themselves. And that level would benefit the environment and the quality of life—things we cannot estimate in cold cash, but which are more important in Montana than I can tell you.

River management requires compromise, and we understand that. Downstream States have not understand that in the past. They wanted to stone wall. They wanted everything, and they have usually gotten it in the past. But the problems remain. We pledge to work with our friends downstream to find a fair solution.

I can tell you now, Mr. President, that anything under 44 million acre-feet is unacceptable, and anything that gives navigation more than its fair share will not fly.

PLAN IS INADEQUATE IN COMBATING EROSION

Finally, the plan ignores erosion. Before we completed Fort Peck Dam in 1940, there was virtually no erosion anywhere along the river, from what is now the dam to Lake Sakakawea. Since then, 4,935 acres of prime farm land have eroded away, washed down to North Dakota by explosive releases from the Fort Peck Reservoir. And the corps itself predicts in the next 50 years, erosion will cost us another 4,500 acres.

Talk about taking private property without compensation. Here is an example. The farmers in Montana have received no compensation for what they have lost. And the corps has done nothing to stop further erosion. In the 54 years we have had the Fort Peck Dam, the corps has built one—just one—streambank stabilization project in Montana.

That defies common sense. It defies good policy. And it defies the law. The Water Resources Development Act of 1990 requires the corps to spend $3 million every year to perform streambank stabilization. And under the preferred alternative, there will be more releases, not fewer. It is no better—in fact, it is worse—than the status quo.

FDR'S PROMISE

Plain and simple, the corps must do better. It is time the corps kept the old promise that the river would be managed for everybody.

President Franklin Delano Roosevelt made that promise to us. He came to Fort Peck 4 years before I was born. In those days, few Montanans owned cars. The Depression had us flat on our back. Twenty-eight Montana counties applied for aid from the Red Cross. We have only 56 counties in the entire State. North of Fort Peck, in Daniels County, 3,500 of the county's 5,000 citizens were on Federal relief—3,500 of the county's 5,000 citizens were on relief.

But even so, 20,000 Montanans came out to see their President. FDR stood under the massive wooden scaffold they put up to build the dam. And he said:

> The Nation has understood that we are building for future generations of our children and grandchildren, and that in the greater part of what we have done, the money spent is an investment which will come back a thousand-fold in the coming years.

We believed him. We put in the investment. Montana farmers gave up 250,000 acres of prime riverbottom land. But very little of it—forget "a thousand-fold"—has returned.

Year after year, for six decades, the corps has betrayed FDR's promise. We are sick and tired of it. It is time to put it right.

CONCLUSION

I am sorry if I have gotten a little emotional about this. But when it comes to keeping Montana's water in Montana, most of us get emotional. And I do want to recognize the progress the corps has made.

Ken Byerly, the editor emeritus of the Lewistown News Argus, once wrote that "solving this problem is like eating an elephant; you take it one bite at a time."

We have taken some bites already. About 4 years ago, the late Senator Quentin Burdick and I convinced the corps to admit that the basic manual—a work drafted in the 1950's, before the Interstate Highway System made barge traffic more or less obsolete—had to be redone to meet the needs of the 1990's.

But the corps has not spent a penny. Instead, it orders releases of water that increase erosion.

In 1993, at our hearing in Glendive, Colonel Schaufelberger, who was the commander of the Missouri River Division of the corps at that time, somewhat sheepishly agreed that the corps' lawyers had been wrong. Federal laws actually do let the corps consider recreation on an equal basis with navigation and other uses. I ask unanimous consent that an excerpt of his testimony be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXCERPT FROM A HEARING BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, OCTOBER 1, 1993

Senator BAUCUS. * * *

I would like to begin with Mr. Duffus. You state in your report that there is no legal requirement that the Corps give preference to navigation over recreation; in fact, you state in your report that recreation must be given at least equal status to navigation. That is, the law makes that clear, in GAO's judgment, that recreation has equal status compared with navigation. Is that correct?

Mr. DUFFUS. That's correct, Mr. Chairman.

Senator BAUCUS. And what do you base that on? Is that just your reading of the statute? What's the reason for that?

Mr. DUFFUS. The basis for the Corps' categorization of project purposes as primary or secondary rose out of their conclusion that if a project purpose was not identified and had cost allocated to it, then it was not primary, it was secondary. It had to be relegated to a secondary purpose. In documents that they sent up to the Congress when the project was authorized in 1994 and approved, recreation was not allocated any cost. So it was on that basis that the Corps came to the conclusion that recreation was a secondary purpose.

Our review of the statute and our review of the legislative history found no basis for that.

Senator BAUCUS. Colonel, do you agree that there is nothing in the law that requires navigation to be given preference over recreation—or to ask the same question turned around, that the law in fact requires that equal emphasis be given to recreation as compared to navigation?

Colonel SCHAUFELBERGER. Sir, the law does not discriminate. The law says in the purposes of the reservoirs—and they are enunciated—there is no priority established. So there is nothing in the law that says there has to be one priority over the other. The only priority established in the law is the O'Mahoney-Milliken amendment, which specifies that consumptive use has priority over other purposes. That's the only priority that I'm aware of that is specified by law.

Senator BAUCUS. But there is nothing in the law that gives preference to navigation over recreation?

Colonel SCHAUFELBERGER. That is correct, there is nothing in the law.

Mr. BAUCUS. And today I am introducing a bill entitled the "Missouri River Water Control Equity Act." It will balance the equities between the upper and lower basin States. It will require a greater emphasis on recreation. And it will ensure that common sense, not pork-barrel politics, determine how the Missouri River is run.

It may seem unimportant compared to many bills before the Congress. But it means everything to Montanans. We have a lot of elephant steak left to fry, but we are firing up the grill and we are determined to make progress.

I thank you, Mr. President, and I want to thank my colleagues, particularly the distinguished minority leader and also my very good friend, the Senator from North Dakota, Senator CONRAD, for joining me here today.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 525

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 "Missouri River Water Control Equity Act."

SEC. 2. FINDINGS.

Congress finds that—

(1) gross revenues from recreation on the Missouri River system are estimated by the Army Corps of Engineers to be $77,000,000 annually;

(2) gross revenues from navigation on the Missouri River system are estimated by the Army Corps of Engineers to be $15,000,000 annually;

(3) barge traffic produces only 1 percent of the annual net revenue that derives from the operation of the Missouri River system;

(4) the Army Corps of Engineers requires 18,000,000 acre-feet of water to remain in the reservoirs of the Missouri River system;

(5) maximum economic benefits for the Missouri River system are estimated by the Army Corps of Engineers to be achieved if 44,000,000 acre-feet of water are maintained in the reservoirs of the Missouri River system;

(6) the recreation industry along the Missouri River has been stifled by drawdowns of the reservoirs of the Missouri River system during drought periods;

(7) barge traffic on the Missouri River has steadily decreased since 1977 so that currently the quantity of cargo shipped on the Missouri River is only 1,400,000 tons annually;

(8) the States of Missouri, Iowa, Kansas, and Nebraska receive 68 percent of the total economic benefits of the Missouri River system; and

(9) the States of Montana, North Dakota, South Dakota, and Wyoming receive only 32 percent of the total economic benefits of the Missouri River system.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to ensure that the States of Montana, North Dakota, South Dakota, and Wyoming receive an equitable portion of the economic benefits from the operation of the Missouri River system;

(2) to encourage the development of the recreation industry along the Missouri River;

(3) to maximize the economic benefits to the United States of the operation of the Missouri River system; and

(4) to phase out navigation, which is the least productive use of the Missouri River system, in order to increase the productivity of other competing uses of the system such as hydropower and flood protection.

SEC. 4. MINIMUM POOL LEVELS.

(a) MISSOURI RIVER SYSTEM.—The Secretary of the Army, acting through the Assistant Secretary of the Army having responsibility for civil works (referred to in this Act as the "Secretary"), shall not permit the permanent pool levels in the Missouri River system to fall below 44,000,000 acre-feet at any time unless the Secretary makes a finding that a lower level is required to provide necessary—

(1) emergency flood control to protect human life and property;

(2) hydropower; or

(3) water supply.

(b) FORT PECK LAKE.—The Secretary shall not permit the permanent pool level in Fort Peck Lake to fall below 12,000,000 acre-feet (which is equivalent to an elevation of 2,220 feet) at any time unless the Secretary makes a finding that a lower level is required to provide necessary—

(1) emergency flood control to protect human life and property;

(2) hydropower; or

(3) water supply.

SEC. 5. NAVIGATION DEAUTHORIZED.

(a) TRANSITION PROVISION.—The Secretary shall decrease the length of the first navigation season that begins after the date of enactment of this Act, and each navigation season thereafter, by 30 days from the length of the previous navigation season, until such time as the navigation season for the Missouri River is eliminated.

(b) PROHIBITION.—Beginning on the day after the end of the last navigation season under subsection (a), the Secretary may not authorize a program, project, or activity that involves navigation on the Missouri River.

SEC. 6. MITIGATION OF EROSION.

(a) IN GENERAL.—Not later than January 1, 1997, the Secretary shall develop and implement a plan to mitigate streamback and reservoir erosion caused by the operations of the Missouri River system.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the plan developed under subsection (a) $20,000,000 for each fiscal year.

Mr. CONRAD. Mr. President, I would like to salute the Senator from Montana, Senator BAUCUS, for his leadership on this subject. The Senator from Montana has been an absolute champion for our part of the country in trying to get fair treatment and equity with respect to the management of the mainstream reservoirs. He has been absolutely determined and dedicated to achieving a fair result.

I can remember very well when the Senator from Montana and I teamed up to stop the appointment of a new head of the Corps of Engineers until our part of the country got fair treatment in the depths of the worst drought we had suffered since the Great Depression. The Senator from Montana, Senator BAUCUS, has shown nerves of steel in taking on the Corps of Engineers on this issue. Very frankly, our part of the country has gotten short shrift, gotten shortchanged, and it has to be altered.

Now we know that for years the Corps of Engineers was operating on a policy that was not supported by law and was not supported by fact. And it is because of the energy and effort of the Senator from Montana, in large measure, that we are moving toward a new day today. I want to thank him publicly for everything he has done.

Mr. BAUCUS. Will the Senator yield?

Mr. CONRAD. Yes.

Mr. BAUCUS. I thank the Senator.

Mr. President, I think that North Dakotans should know that there is no Senator who has worked harder on this issue than their Senator, KENT CONRAD. He and I have teamed up many times on this matter. And I must say it is a combination of working with the Senator from North Dakota, as well as the other Senator from North Dakota, Senator DORGAN, and other members of the House delegation that has enabled us to stem—pardon the pun—more of the flow down the stream. But this is a problem that has to be corrected, and I

thank my colleague for joining me in assuring this correction is made.

Mr. CONRAD. I thank the Senator from Montana. It has been a team effort, but I think there is no doubt the Senator from Montana, Senator BAUCUS, has been a key player in this effort.

Mr. President, from its origins in Montana to its end near St. Louis, the mighty Missouri River is managed and controlled by the Army Corps of Engineers. Five years ago, the Army Corps of Engineers began a review of its river management plan, commonly called the master manual. This was the first major review of the manual since it was implemented in 1960.

The corps started this review in response to our concerns over falling reservoir levels in the Dakotas and Montana. At that time, we were in the middle of the worst drought since the Great Depression, and the corps was draining huge amounts of water from the reservoirs for the sole purpose of keeping a small number of barges on the Missouri River afloat.

I can remember very well holding a hearing in the midst of that terrible drought and learning, to my shock and my surprise, that the Army Corps of Engineers was releasing record amounts of water from our reservoirs in the midst of the worst drought in 50 years. I mean, think about it. It is absolutely extraordinary. In the worst drought in 50 years, they were releasing record amounts of water and, as a result, our reservoir levels were dropping like a stone.

Mr. President, while the barges continued to float, Lake Sakakawea and other mainstream reservoirs dropped by almost 30 feet. It is hard to imagine. It is hard to visualize what that meant, Mr. President. I know the occupant of the chair, the distinguished occupant of the chair, is from a downstream State, and I know there are legitimate interests there as well. But I say to you, if you could have seen what was happening in our part of the country, I think even the downstreamers would have been stunned. To see a reservoir drop 30 feet in a very short period of time and to see the economic wreckage caused by that drop, I think, told many of us that something was badly askew.

I can still remember a young couple. He had been a pro football player. He and his wife put everything they had into a resort right before the drought hit. And when the reservoir dropped, they found their marina high and dry. They found everything they had put in, all their life savings, everything they could borrow, was lost, all of it put at risk and all of it lost.

Mr. President, the water has returned to our reservoirs, but the need to change the master manual remains. Five years of corps study has made it clear that the current master manual provides disproportionate benefits for downstream States at the expense of upstream States. About 70 percent of the system's economic benefits goes to downstream States, while upstream States get roughly 30 percent. This is not a fair distribution of benefits and it should change.

Of special concern to me is the fact that the current plan destroys a growing recreation industry from the upper basin to keep subsidizing a shrinking Missouri River barge industry.

The main problem with the current manual is that it is slanted toward navigation and based on outdated assumptions. The master manual anticipates annual river navigation traffic of 12 million tons. We have never even gotten close to that number. Commercial navigation is now around 2 million tons per year; in other words, one-sixth of what is assumed in the current master manual.

Navigation supplies only 1 percent of the system's annual economic benefits—$17 million out of $1.3 billion. This compares with $76 million in annual benefits from recreation. Yet, the corps continues to manage the entire system for the benefit of navigation and to the detriment of other functions. Navigation is the only project function managed for 100 percent of its potential—potential—economic output.

In economic terms, does it make any sense for the corps to favor navigation over recreation? Anyone who takes an honest look at the facts would answer "No."

Mr. President, the time has come to change this policy. The corps should stop pretending that navigation is king. It is not. It never was. My colleagues may be surprised to hear that the entire Missouri River system would actually generate greater economic benefits if Missouri River navigation were deemphasized. In other words, we would give the taxpayers a better return on their investment if we would place less emphasis on barges on the Missouri.

I believe that a better way to manage the river would be to deemphasize Missouri navigation and keep more water in the upstream reservoirs. Such a move would increase total economic benefits, improve the river ecosystem, and result in more equitable distribution of the benefits. Recreation and hydropower benefits would increase while flood control and water supply functions would be largely unaffected.

In addition, deemphasizing Missouri river navigation would significantly improve the river ecosystem. This approach makes economic sense. It makes environmental sense. I cannot understand how any rational review of the situation could reach any other conclusion.

Mr. President, the public has been fed a good deal of misinformation about the master manual review. I want to address two falsehoods that are being spread by some who are opposed to change.

First, the upstream States are not trying to use up, take away, or sell all of the Missouri River water that would otherwise go downstream. There is no way that North Dakota or any other upstream State could use enough Missouri River water to affect the downstream flows. It simply cannot be done. In addition, North Dakota has, I say, no—and I repeat no—plans to divert to another State, sell, or trade away the rights to Missouri River water.

Second, changes in the Missouri River master manual will not significantly impact navigation and water supply on the Mississippi River. Corps analysis concluded that "Changes in the Missouri River operations would not"—let me repeat that—"would not affect water supply on the Mississippi River." Corps analysis also found there was essentially no difference in Mississippi navigation between the current plan and the corps' proposed change.

Finally, my colleagues should keep in mind that there is a legitimate issue of fairness at work here. The upstream States have sacrificed 1.2 million acres of prime land to house the reservoirs that serve and protect the downstream States. In return, we get a fraction of the benefits and a fraction of the water projects that were promised as compensation some 50 years ago.

Mr. President, let me emphasize, we have given up 1.2 million acres—a permanent flood in our States—in order to save the downstream States from repetitive flooding. So we have the permanent flood to save them from annual flooding. Yet, they get the lion's share of the benefits of the management of the system.

In contrast to what we have experienced upstream, the downstream States have sacrificed nothing but received the lion's share of the benefits, including navigation water supply, and to date $5 billion worth of flood control—not million—$5 billion worth of flood control. This is not what I call equity.

Mr. President, what we need in the Missouri River Basin is balance in fairly meeting the competing interests along the river. By making key changes in the master manual, we can achieve this balance while at the same time increasing economic and environmental benefits.

Mr. DASCHLE. Mr. President, the Corps of Engineers manages the flow of the Missouri River based on assumptions about economic uses of the river that have not been seriously reexamined or revised in 50 years. Impartial observers, including the General Accounting Office, acknowledge that the rules for operating the dams along the river, known as the master manual, are outdated.

Historically, upstream States, including South Dakota, have accepted

the burden of flood control on the river. This tradition began with the sacrifice of prime land to the construction of dams to prevent downstream flooding.

Over time, recreation in upstream States has come to play a much more prominent role in producing economic benefits from the river. Yet corps management of the river ignores this development and continues to give recreation lower priority than competing downstream uses.

Today there is general consensus on the need to substantially revise the guidelines by which the Federal Government operates the dams on the Missouri River. After reviewing the management of the Missouri River in 1992, the General Accounting Office concluded that the corps has been managing the river based on "assumptions about the amount of water needed for navigation and irrigation made in 1944 that are no longer valid." According to GAO, "the plan does not reflect the current economic conditions in the Missouri River Basin."

As a result, in 1989 the Corps of Engineers initiated a study of the operation of the main stem of the Missouri River, in anticipation of revising the master manual. A number of alternative management plans were developed and, based on the historical behavior of the river—from 1898 to 1994—the economic and environmental impacts of each alternative were evaluated. The goal of this exercise was to identify which alternative would maximize the economic value of the river, considering such factors as flood control, navigation, hydropower, water supply, and recreation.

In May 1994, the corps selected a preferred alternative, which called for shortening the navigation season by 1 month and maintaining a higher permanent pool behind the dams. In July 1994, the draft environmental impact statement [EIS] was released for review. The public comment period ended on March 1.

What has become clear through this 6-year process is that the downstream States will go to great lengths to prevent this reassessment from moving forward. Congressional representatives from downstream States consistently have attempted to block any revision of the Master manual that reflects the changing economics of the river and gives recreation the priority it deserves.

The House Appropriations Committee in 1993—at the behest of downstream members—called on the corps "to follow the legislative priorities and regulatory guidelines expressed in its current master manual until a new management plan is approved by Congress." Now that the corps has selected the preferred alternative, the downstream States have made it clear that they will fight the changes it recommends.

It appears increasingly unlikely that even modest changes in the master manual will be allowed to occur without legislation. That is regrettable.

To focus light on the heart of this issue, today Senator BAUCUS is introducing the Missouri River Water Control Equity Act, which seeks to ensure that the changing economic conditions are acknowledged and reflected in the management of the river. This bill simply states explicitly policy that should be implicit.

This bill reflects the analysis of corps professionals. It would require the agency to maintain a permanent pool of 44 million acre-feet behind most dams, while allowing it to maintain lower levels if necessary to meet downstream needs for flood control, water supply and hydropower. It would also reduce the navigation season and require the corps to develop and implement a plan to mitigate stream bank erosion caused by operation of the dams.

Mr. President, times have changed. Assumptions valid 50 years ago are no longer valid today.

Since 1944, significant economic changes have occurred in the economy of the Missouri River. The downstream users refuse to accept this fact. Instead, they cling to the outdated assumptions that disproportionately reward their States to the detriment of upstream users.

Given the results of the corps' own evaluation, the revisions should have gone much farther. Greater consideration should have been given to increasing the permanent pool from its current level of 18 million acre-feet. The analysis performed by the corps demonstrates significant increases in recreation and wildlife habitat benefits at higher permanent pool levels. Given the immense economic value of recreation in the upstream States—now a $77 million per year industry—as well as the ecological damage that has been suffered over the years due to disruption of wetlands and the flooding of prime crop land—the master manual should be altered to better support these activities.

The bill introduced today would require the corps to make modest changes in the management of the river that their professionals have recommended; changes that are fair and that increase national environmental and economic benefits from the river.

Neither the upstream States nor the Nation as a whole can afford to continue business as usual. It is my hope that Congress will take an objective look at this issue, recognize the merits of this legislation and move swiftly to enact it.

By Mr. GREGG (for himself and Mr. BOND):

S. 526. A bill to amend the Occupational Safety and Health Act of 1970 to make modifications to certain provisions, and for other purposes; to the Committee on Labor and Human Resources.

THE OSHA AMENDMENTS OF 1995

• Mr. GREGG. Mr. President, when OSHA was enacted it was intended to make the workplace free from "recognized hazards that are causing, or likely to cause, death or serious physical harm to * * * employees." As with many programs established by Congress, however, over the years OSHA has developed a well-earned reputation for over-regulation. OSHA has moved from its original purpose of protecting the workers to hindering businesses with excessive mandates.

While I feel that a major problem within OSHA is of a cultural nature, the bill will concentrate on five areas that will relieve the oppressive and burdensome regulations. My bill, the OSHA Amendments of 1995, addresses the need for employee participation, risk assessment in standard making, consultation services, reduced penalties for nonserious violations, and warnings in lieu of citations.

This balanced approach will remove a feeling among the American employers and employees that OSHA is the bad cop, and institute an awareness of a partnership in assuring safety and health in the workplace. The limitation of burdensome and repetitious paper work, compiled with risk assessment and a reduced threat of large fines, will make for a more businesslike approach.

As Chairman of the Labor Subgroup of the Regulatory Relief Task Force, I have received numerous requests for the reform of OSHA. This past month I held a roundtable on regulatory reform in my State of New Hampshire and, although there were many issues raised, the one that was unanimously supported was OSHA reform. Businesses across America share New Hampshire's exasperation with what OSHA has become, as well as their demands for relief. This bill begins to answer that call to action.•

By Mr. LOTT:

S. 527. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Empress;* to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION LEGISLATION

Mr. LOTT. Mr. President, I am introducing a bill today to direct the vessel *Empress*, Official Number 975018, be accorded coastwise trading privileges.

The *Empress* was constructed in 1925 in the United States. It is 75 feet in length, 16 feet in width, 5.5 feet in depth, and is self-propelled. The vessel was owned by the United States until 1960. The vessel has been used as a corporate business vessel, private residence, and charter vessel. It has also

been used by nonprofit groups such as the Special Olympics, March of Dimes, and the Ronald McDonald House.

The current owner obtained the boat from his father. The owner has all ownership records except for the years 1960 to 1965, when the vessel was being used by the Boy Scouts of America.

The owner of the vessel is seeking a waiver of the existing law so that the vessel can be used as a charter vessel.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 527

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding section 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel EMPRESS (United States official number 975018).

By Mr. LOTT:

S. 528. A bill to authorize the Secretary of Transportation to issue a certificate of documentation and coastwise trade endorsement for three vessels; to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION LEGISLATION

Mr. LOTT. Mr. President, today I am introducing legislation which seeks to temporarily authorize the operation of three vessels in the coastwise trade. Ordinarily, I do not support any legislative relief from section 27 of the Merchant Marine Act of 1920 to allow operation of vessels not constructed in the United States. In this particular instance, however, temporary relief from the Merchant Marine Act will increase jobs in the shipbuilding industry, support the addition of maritime jobs and expand the maritime transportation base.

I want to point out that the bill I am introducing today protects the U.S.-build requirements of the Jones Act by stipulating that these three vessels are authorized to operate in the coastwise trade if, and only if, three criteria are met. These criteria are:

The owner of these vessels must execute a binding contract for construction of replacement vessels within 9 months of enactment of this provision;

All necessary repairs required to operate these vessels in the coastwise trade must be performed in shipyards in the United States; and

Each of these vessels must be manned by U.S. citizens.

If this legislation is adopted, jobs in the U.S. maritime industry will be increased and new opportunities for maritime passenger transportation in high demand areas will be created. Without this authorization, these opportunities—including the addition of over 100 new shipyard jobs—will not occur.

I appreciate the attention of my colleagues and yield the floor.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 528

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COASTWISE TRADE AUTHORIZATION FOR HOVERCRAFT.

Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Act of June 19, 1886 (46 U.S.C. App. 289), and sections 12106 and 12107 of title 46, United States Code, the Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for each of the vessels IDUN VIKING (Danish Registration number A433), LIV VIKING (Danish Registration number A394), and FREJA VIKING (Danish Registration number A395) if—

(1) all repair and alteration work on the vessels necessary to their operation under this section is performed in the United States;

(2) a binding contract for the construction in the United States of at least 3 similar vessels for the coastwise trade is executed by the owner of the vessels within 6 months after the date of enactment of this Act; and

(3) the vessels constructed under the contract entered into under paragraph (1) are to be delivered within 3 years after the date of entering into that contract.

ADDITIONAL COSPONSORS

S. 4

At the request of Mr. MCCAIN, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 4, a bill to grant the power to the President to reduce budget authority.

S. 50

At the request of Mr. LOTT, the names of the Senator from Utah [Mr. HATCH], and the Senator from Idaho [Mr. CRAIG] were added as cosponsors of S. 50, a bill to repeal the increase in tax on Social Security benefits.

S. 88

At the request of Mr. HATFIELD, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 88, a bill to increase the overall economy and efficiency of Government operations and enable more efficient use of Federal funding, by enabling local governments and private, nonprofit organizations to use amounts available under certain Federal assistance programs in accordance with approved local flexibility plans.

S. 90

At the request of Mr. HATFIELD, the name of the Senator from Oregon [Mr. PACKWOOD] was added as a cosponsor of S. 90, a bill to amend the Job Training Partnership Act to improve the employment and training assistance programs for dislocated workers, and for other purposes.

S. 145

At the request of Mr. GRAMM, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 145, a bill to provide appropriate protection for the constitutional guarantee of private property rights, and for other purposes.

S. 191

At the request of Mrs. HUTCHISON, the names of the Senator from Missouri [Mr. BOND], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 191, a bill to amend the Endangered Species Act of 1973 to ensure that constitutionally protected private property rights are not infringed until adequate protection is afforded by reauthorization of the Act, to protect against economic losses from critical habitat designation, and for other purposes.

S. 240

At the request of Mr. DOMENICI, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 240, a bill to amend the Securities Exchange Act of 1934 to establish a filing deadline and to provide certain safeguards to ensure that the interests of investors are well protected under the implied private action provisions of the Act.

S. 267

At the request of Mr. STEVENS, the name of the Senator from Louisiana [Mr. BREAUX] was added as a cosponsor of S. 267, a bill to establish a system of licensing, reporting, and regulation for vessels of the United States fishing on the high seas, and for other purposes.

S. 327

At the request of Mr. HATCH, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 327, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 348

At the request of Mr. NICKLES, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 348, a bill to provide for a review by the Congress of rules promulgated by agencies, and for other purposes.

S. 351

At the request of Mr. HATCH, the names of the Senator from New York [Mr. D'AMATO], and the Senator from Oklahoma [Mr. INHOFE] were added as cosponsors of S. 351, a bill to amend the Internal Revenue Code of 1986 to make permanent the credit for increasing research activities.

S. 478

At the request of Mr. BREAUX, the names of the Senator from Connecticut [Mr. DODD], and the Senator from

Washington [Mr. GORTON] were added as cosponsors of S. 478, a bill to amend the Internal Revenue Code of 1986 to allow the taxable sale or use, without penalty, of dyed diesel fuel with respect to recreational boaters.

S. 497

At the request of Mr. HELMS, the name of the Senator from New Hampshire [Mr. SMITH] was added as a cosponsor of S. 497, a bill to amend title 28, United States Code, to provide for the protection of civil liberties, and for other purposes.

S. 503

At the request of Mrs. HUTCHISON, the name of the Senator from Wyoming [Mr. THOMAS] was added as a cosponsor of S. 503, a bill to amend the Endangered Species Act of 1973 to impose a moratorium on the listing of species as endangered or threatened and the designation of critical habitat in order to ensure that constitutionally protected private property rights are not infringed, and for other purposes.

S. 508

At the request of Mr. MURKOWSKI, the name of the Senator from Louisiana [Mr. JOHNSTON] was added as a cosponsor of S. 508, a bill to amend the Internal Revenue Code of 1986 to modify certain provisions relating to the treatment of forestry activities.

S. 510

At the request of Mr. MCCAIN, the name of the Senator from Colorado [Mr. CAMPBELL] was added as a cosponsor of S. 510, a bill to extend the authorization for certain programs under the Native American Programs Act of 1974, and for other purposes.

AMENDMENT NO. 331

At the request of Mrs. KASSEBAUM the names of the Senator from Oklahoma [Mr. NICKLES], and the Senator from Tennessee [Mr. FRIST] were added as cosponsors of Amendment No. 331 proposed to H.R. 889, a bill making emergency supplemental appropriations and rescissions to preserve and enhance the military readiness of the Department of Defense for the fiscal year ending September 30, 1995, and for other purposes.

At the request of Mr. HELMS his name was added as a cosponsor of Amendment No. 331 proposed to H.R. 889, supra.

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. NICKLES. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Energy Production and Regulation.

The hearing will take place Tuesday, March 21, 1995, at 10 a.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on S. 92, a bill to provide for the reconstitution of outstanding repayment obligations of the administrator of the Bonneville Power Administration for the appropriated capital investments in the Federal Columbia River Power System.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Howard Useem or Judy Brown at (202) 224-6567.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Thursday, March 9, at 9:30 a.m., in SR-332, to discuss "Farm Programs: Are Americans Getting What They Pay For?"

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9:30 a.m., on Thursday, March 9, 1995, in open session, to receive testimony on the defense authorization request for fiscal year 1996 and the future years defense program.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 9, 1995, at 10 a.m. to conduct a hearing on the Mexican peso.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, March 9, 1995, for purposes of conducting a full committee business meeting, which is scheduled to begin at 10:30 a.m. The purpose of this meeting is to consider the nomination of Wilma Lewis to be inspector general of the Department of the Interior.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet Thursday, March 9, 1995, beginning at 9:30 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing on welfare reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 9, 1995, at 10 a.m. to hold a hearing on "Implementation and Costs of U.S. Policy in Haiti."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, March 9, 1995, at 2 p.m., to hold a hearing on the "Overview of South Asian Proliferation Issues."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, March 9, for a markup, at 9:30 a.m., on S. 219, Regulatory Transition Act of 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, March 9, 1995, at 10 a.m., to hold a hearing on "S. 227, the Performance Rights in Sound Recordings Act of 1995."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. JEFFORDS. Mr. President, the Committee on Veterans' Affairs would like to request unanimous consent to hold a hearing on the nomination of Dennis M. Duffy to be Assistant Secretary for Policy and Planning for the Department of Veterans Affairs, and on the budget for veterans programs for fiscal year 1996. The hearing will be held on March 9, 1995, at 10 a.m., in room 418 of the Russell Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AVIATION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Aviation Subcommittee of the Senate Committee on Commerce, Science, and Transportation be authorized to meet on March 9, 1995, at 2:30 p.m., on the Metropolitan Washington Airports Authority.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

ODDS AGAINST CONTROLLING GAMBLING FEVER IN ILLINOIS

• Mr. SIMON. Mr. President, recently, the Bloomington Pantagraph had an editorial that I ask be printed the RECORD, commenting on the matter of gambling in Illinois.

The phenomenon is not a problem only in Illinois.

I have introduced legislation calling for a national commission to look at where we are going in this area and to look into its impact on the Nation.

We are talking about the fastest growing industry in the United States, and there are obviously problems that go with that escalation.

The Drake Law Review recently had a very extensive study of this question and came to the conclusion that we are harming our country.

I hope Congress will authorize a careful look at this whole question.

The editorial follows:

[From the Pantagraph, Feb. 23, 1995]

ODDS AGAINST CONTROLLING GAMBLING FEVER IN ILLINOIS

Gambling fever seems to be spreading across Illinois like a prairie fire.

Horse tracks have been around for awhile, but the state broke new ground by subsidizing the rebuilding of Arlington International Raceway when the original track burned.

For those who didn't want to go to the tracks, there have been plenty of bingo parlors around. And the state finally got around to licensing them to make them legal.

And there is the state lottery, where the proliferation of games to lose money—with a few exceptions, of course—never ceases to amaze us.

We also have the riverboats, the floating crap games. It hasn't been enough to just have the riverboats; owners have chartered buses to transport gamblers from various cities.

Oh yes, let's not forget the offtrack betting parlors that have sprung up in at least a half-dozen Illinois cities.

But there is still constant stirring in Springfield for more licensed gambling—casino gambling.

Had enough? There's more.

The mega-raffles seem to be hitting Illinois much harder this year, too.

There's one in Bloomington-Normal now. Central Catholic High School's Dream House raffle is offering a top prize of a $200,000 house under construction on Bloomington's northeast side. Only 2,400 tickets are being sold at $100 each.

Sangamon County is concerned enough about such raffles that it regulates them with a code. Last month, the county raised the maximum for such raffles from $150,000 to $250,000. Since then, a fourth "mega-drawing" of the year has been announced in Springfield—this one for a $180,000 house to benefit Big Brother/Big Sister of Sangamon County.

Perhaps we shouldn't be surprised that in that same city, legislation was introduced two weeks ago to permit video lottery gambling at locations licensed to conduct charitable games, primarily private/social clubs.

We haven't even mentioned the office pools or the illegal bookies and tip boards in probably every major city.

It seems rather ironic that this fever pitch for gambling is often tempered because proceeds are earmarked for charity, or education, or county fairs.

We know gambling is an easy way to make a quick buck—for the sponsor.

And we haven't mentioned that a small bet for a large prize can be titilating.

But the stakes seem to be escalating. It's time Illinois legislators take a more critical look at gambling—what it was, what it has become, what it has done and where it is going.

Please, no more legalized gambling. We'll bet there are ample opportunities to lose money now.•

ORDERS FOR TOMORROW

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 10 a.m. on Friday, March 10, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, and there then be a period for the transaction of morning business not to extend beyond the hour of 11:00 a.m., with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator GRASSLEY, 10 minutes; Senator Abraham, 10 minutes; Senator KOHL, 10 minutes; and Senator GRAHAM from Florida, 15 minutes.

I further ask unanimous consent that at the hour of 11:00 a.m., the Senate resume consideration of H.R. 889, the supplemental appropriations bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, for the information of all of my colleagues, a cloture motion was filed today on the pending amendment offered by Senator KASSEBAUM. Therefore, cloture will occur on the Kassebaum amendment during Monday's session of the Senate. It is my hope that tomorrow we will temporarily set aside the Kassebaum amendment so we may continue to consider other amendments to the bill. Senators should be aware that rollcall votes are expected throughout Friday's session of the Senate.

I will just say to my colleagues who are in their offices, or staff, that I have not had a procedural vote this year. I do not like procedural votes. I do not like Sergeant at Arms votes, but unless we can make some progress tomorrow—of course, if Senators are talking, there would be no need, but unless those who are opposing us from putting the question on the pending amendment are willing to talk, we will have procedural votes tomorrow, even though I have never been particularly excited about that approach.

I will also say, we come in at 10 a.m., and tomorrow Dr. Halverson will lead us in prayer for the final time. So I hope my colleagues will be here a little before 10 a.m. tomorrow morning.

RECESS UNTIL 10 A.M. TOMORROW

Mr. DOLE. Mr. President, if there be no further business to come before the Senate, I now ask that the Senate stand in recess under the previous order.

Thereupon, the Senate, at 8:03 p.m., recessed until Friday, March 10, 1995, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate March 9, 1995:

UNITED STATES INSTITUTE OF PEACE

DANIEL A. MICA, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1997, VICE W. SCOTT THOMPSON, TERM EXPIRED.

HARRIET M. ZIMMERMAN, OF FLORIDA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE UNITED STATES INSTITUTE OF PEACE FOR A TERM EXPIRING JANUARY 19, 1999, VICE WILLIAM R. KINTNER, TERM EXPIRED.

HOUSE OF REPRESENTATIVES—*Thursday, March 9, 1995*

The House met at 10 a.m.

PRAYER

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

In this brief moment of quiet, O gracious God, direct our hearts and minds to those themes that are at the center of our stewardship. We pray that we will be worthy of the high calling to public service by serving people with honesty and courage and by committing ourselves to the virtues of justice and peace and reconciliation. May our eyes not only be focused on what must be done in the coming hour or the day, but may our vision also grasp the great responsibilities to which we have been called. May we ever heed the words of Your prophet Amos: "Let justice flow down like waters and righteousness like an everflowing stream." 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 Michigan [Mr. KILDEE] come forward and lead the House in the Pledge of Allegiance

Mr. KILDEE 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.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair announces that there will be 10 1-minutes on each side.

REPUBLICAN CONTRACT WITH AMERICA

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

Mr. HOKE. Mr. Speaker, our Contract With America states the following:

On the first day of Congress, a Republican House will require Congress to live under the same laws as everyone else; cut committee staffs by one-third; and cut the congressional budget.

We kept our promise.

It continues that in the first 100 days, we will vote on the following items: A balanced budget amendment—we kept our promise; unfunded mandates legislation—we kept our promise; line-item veto—we kept our promise; a new crime package to stop violent criminals—we kept our promise; national security restoration to protect our freedoms—we kept our promise; government regulatory reform—we kept our promise; commonsense legal reform to end frivolous lawsuits—we are doing this now; welfare reform to encourage work, not dependence; family reinforcement to crack down on deadbeat dads and protect our children; tax cuts for middle-income families; senior citizens' equity act to allow our seniors to work without government penalty; and congressional term limits to make Congress a citizen legislature.

Mr. Speaker, this is also a contract with our Founders for our future.

This is our Contract With America.

INFANT FORMULA AND THE WIC PROGRAM

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

Mr. KILDEE. Mr. Speaker, in the debate about child nutrition in the Committee on Economic and Educational Opportunities we witnessed the triumph of ideology over practical public policy and the best interests of our children.

The Republicans, who espouse a free-market economy, recently rejected my amendment to require States to use competitive bidding when purchasing infant formula for the WIC Program.

Only one Republican had the courage to vote for my amendment.

The only winners from this action are the big three infant formula companies. The losers are pregnant women and infants, many of whom will suffer from malnutrition or anemia, and the taxpayers who will get less efficient use of their tax dollars.

Some would say that the States will continue to use competitive bidding. I would point out that fewer than half the States used competitive bidding prior to passage of the 1989 Federal law that required them to do so. When this amendment was adopted we found that it saved over $1 billion a year and enabled us to serve 1½ million more pregnant women and infants a month. The committee voted to drop this requirement.

Weakening cost containment measures will mean a less efficient, less effective program that gives taxpayers less return for their dollars but helps the three infant formula companies improve their balance sheets.

Mr. Speaker, this program was designed to help poor women and children, not a few major corporations. Let us not take food out of the mouths of babies.

IN SUPPORT OF H.R. 956

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

Mr. TIAHRT. Mr. Speaker, today we are going to address H.R. 956, common sense product liability reform. In the last 40 years we have passed one product liability reform bill. What has it done? It was passed for single-engine aircraft. And in the Fourth District of Kansas it has created 7,000 jobs, thanks to the vision of Russ Meyers who heads up Cessna Aircraft.

In 1977, we were building over 13,000 aircraft in the single-engine aircraft business. And Cessna was building over half of those. By 1986 they had to quit building aircraft because of lawsuits. By 1994 they were down to 600 single-engine aircraft and many of them were built overseas.

Product liability reform works and the choice is clear. If you protect trial lawyers who are getting rich from lawsuits—they get over 50 cents of every dollar in the cost of a lawsuit—or you create jobs. It is lawsuits or lunch buckets. I support more lunch buckets and less lawsuits. Let us pass H.R. 956.

REPUBLICANS AND TERM LIMITS

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

Mr. GUTIERREZ. Mr. Speaker, yesterday, in a move that demonstrates the gulf between the rhetoric about the Contract With America and the reality of what it means for Americans, the majority ducked a vote on term limits.

And they did it for a simple reason. They know they are not serious about it.

For all of their talk about citizen legislators, their term limit bill is really about one thing—protecting their power. So I say to the Republicans: Stop hustling the American people. If what you really want is term limits and not limitless headlines, send us a real bill.

If letting the American people decide every 2 years who should represent them doesn't sit too well with Mr. GINGRICH and Mr. ARMEY and Mr. MCCOLLUM—three term limit supporters who have now been citizen legislators for a total of 44 years—then I say give us a real term limits bill.

Make it retroactive.

If you want the headlines, then clean out your desks and head for home the day we pass the bill. When the citizen legislators who have been here for decades show me they are that serious about term limits, then I am with you.

TORT REFORM

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

Mr. CHABOT. Mr. Speaker, I rise to make a confession. There was a time in my life when I was a member of both the American Bar Association and the Association of Trial Lawyers of America. But I resigned from both organizations some years ago when I came to realize that the interests of the legal elite do not always coincide with the public interest. I am happy to say that redemption is possible, and I am here to urge courage in the fight for legal reforms.

Now, I can also tell my colleagues that not all trial lawyers are bad, at least most of them are not. They serve a necessary function in our society and no one here is arguing to put them out of business. Granted there are some lawyers who are convinced that their lifestyle depends upon defending every excess of the tort system, no matter how senseless, no matter how much it adds to the cost of everyday goods and services. But we are on the side of the ordinary people of this country, the consumers.

Maybe our response to the lawyers who do not like these reforms is: If you do not like it, sue us.

IT'S THE TRADE DEFICIT, CONGRESS

(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, the value of the dollar is so low, the dollar could walk underneath a closed door with a top hat on. And it is not really all that cerebral. The problem in America is a trade deficit and Congress has the blinders on.

For the last 15 years we have had trillions of dollars floating around overseas. The supply is so great, the dollar is not in demand, and the dollar is dropping. It is the trade deficit, Congress. Not budget deficits. We cannot separate the two.

And to tell my colleagues the truth, we have a trade program that is so misdirected, if we threw it at the ground it would probably miss.

We will not balance the budget, Congress, with minimum wage jobs and highly skilled American workers in unemployment lines. Think about that. I think the whole country is saying, "Beam me up."

Congress, get at that trade deficit and we will solve the budget deficits in America.

PRODUCT LIABILITY'S CHILLING EFFECT ON MEDICAL RESEARCH

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

Mr. BURR. Mr. Speaker, I want to bring to my colleagues' attention an article from Sunday's Washington Post entitled "America, the Plaintiff."

The story starts out like this. Suppose for a moment that a small drug company miraculously discovers a vaccine that can prevent cancer. Suppose that the drug is cheap, easy to administer and has a single, albeit serious, drawback: One in 10,000 people who take the drug may experience acute vision loss. Should the company bring the product to market, figuring that a relative handful of people may go blind, so that millions of lives can be saved?

This is a question that pharmaceutical manufacturers ask every day. Each day they must weigh their hopes to save human lives against the threat of being punished over an FDA-approved product. How many times will we miss the opportunity to have a cure for cancer, or AIDs, or even the common cold, because a manufacturer knows that one product liability suit will jeopardize the future use of the product and possibly the company.

I hope you will keep this story in mind when you consider your vote today in our lifesaving bipartisan amendment to encourage manufacturers to market FDA-approved products.

REPUBLICANS TAKE APPLES AND MILK AWAY FROM CHILDREN

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

Mr. BARRETT of Wisconsin. Mr. Speaker, when the Republicans announced that they were going to close down the school lunch program and fold it into a block grant program, I went to my favorite expert in my district, my wife, who is a schoolteacher, to ask her what she thought.

She said, I think we should have welfare reform and I understand why people are upset with the Food Stamp Program, but this is the food that these kids eat every day. It is not like they take this food out onto the street and sell it. There is no black market for school lunch programs. Why do the Republicans want to take apples and milk away from 6-year-olds in the United States?

Why could I not answer that question for my wife? In the Halls of Congress I am still waiting for the answer. Why do the Republicans want to take milk and apples away from 6-year-olds in the United States of America?

THE FACTS ON REPUBLICANS AND NUTRITION PROGRAMS

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

Mr. HAYWORTH. Mr. Speaker, I will depart from my prepared text directly to answer my good friend from Wisconsin. First of all, my friend, you know it is an out and out falsehood; we will not take apples nor milk nor any food out of the mouths of the children of this country.

Once again, let us engage in some elementary mathematics. We propose, as Republicans, to up the budget spent, to up the allocation to $200 million over what President Clinton asked for in the food program. We propose an increase of 4.5 percent for next year.

We propose giving the power to feed these children to people on the front lines fighting the battle. I wish my friends on the other side would stop this demagoguery and deal with the facts, Mr. Speaker. Those are the facts and that is the difference we will make for America.

TRYING TO HAVE IT BOTH WAYS

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

Mr. MILLER of California. Mr. Speaker, in 1993, the Ethics Committee explicitly cautioned Speaker GINGRICH to avoid using congressional resources in conjunction with his course on American civilization. He rejected that advice and promoted the course from the House floor.

Now that he is being challenged on that he is trying to use the Constitution to defend his speech on the House floor.

The Speaker cannot have it both ways.

The same Speaker that barred the gentlewoman from Florida, Congresswoman CARRIE MEEK, from discussing

the Speaker's book deal on the House floor is now saying that a Member can say virtually anything on the House floor because it is protected speech under the Constitution.

Speaker GINGRICH said yesterday in his press conference: "It is totally legitimate for a Member of Congress to stand up on the floor of the House and say virtually anything. Nothing the Ethics Committee advises can supersede the constitutional provisions of speech and debate."

The speech and debate clause of article I of the Constitution, however, is solely designed to protect Members of Congress from being questioned in any other place, meaning that a Member cannot be prosecuted or held liable for anything he or she says on the House floor. We all know the House has rules that explicitly forbid Members of Congress from doing this, as the Speaker was advised by the Ethics Committee in promoting his book.

□ 1015

OVERTURN EXECUTIVE ORDER ON STRIKER REPLACEMENTS

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

Mr. BARRETT of Nebraska. Mr. Speaker, with the stroke of a pen, President Clinton yesterday shattered more than 50 years of labor law by issuing an Executive order to prohibit the hiring of permanent replacement workers for companies with Federal contracts.

For 50 years Congress has maintained a careful balance between the powers of labor and management at the bargaining table. We have often fought long and hard on this floor to ensure that neither side had an unfair advantage.

The long arm of organized labor—which represents less than 12 percent of the private labor force—now has privileged status among American workers—something Congress has fought hard to avoid. Some might even say that it is payback time for organized labor, since they gave campaign contributions to Democrats versus Republicans by a ratio of 9 to 1.

Mr. Speaker, the President yesterday slapped the face of Congress, and I am ready to settle the matter as a gentleman. I urge my colleagues to cosponsor H.R. 1179 that would nip this Executive order in the bud by making it null and void.

FARM BILL AWAITS WHILE POST OF SECRETARY OF AGRICULTURE REMAINS VACANT

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

Mr. EWING. Mr. Speaker, President Clinton nominated Dan Glickman to be his Secretary of Agriculture on December 28, 1994, over 2 months ago. Here we are in the first week of March, and no hearings have been held on Mr. Glickman's nomination and it could be many weeks before the Secretary is confirmed.

News reports indicate that the nomination is stalled because of unanswered questions. This is unfortunate as there is no proof of any wrongdoing.

This Congress will begin holding hearings on the 1995 farm bill in the next few weeks, and the Clinton administration has nobody in charge of its agriculture policy. In fact, it would appear that agriculture policy generally is of minor concern to the administration. How can we write a fair and reasonable farm bill or establish agriculture policy when the lights are out in the Agriculture Secretary's office?

IN SUPPORT OF FUNDING FOR LIHEAP

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

Mr. DOYLE. Mr. Speaker, I rise today in strong support of continued funding for LIHEAP, the Low-Income Home Energy Assistance Program. LIHEAP is a block grant that provides funding for programs that assist low-income households with heating during the winter months. On February 22, the House Appropriations Committee voted to eliminate funding for the entire program. Lack of funding for this program would effectively destroy the ability of 5.8 million American families to pay their energy bills. Cutting LIHEAP would effectively put people—children, seniors, disabled, and the working poor alike—out in the cold. In my State, Pennsylvania, 466,000 households would be affected.

At a time when the crux of all the rhetoric coming from the other side of the aisle is the need for input and control for those on the State and local level—why is it that LIHEAP, a successful block grant providing an outstanding example of a Federal-State partnership with the built-in flexibility that allows States to design programs to respond to the heating needs of their citizens being decimated? The irony of this situation is rich, Mr. Speaker, but irony will not keep you warm—at anytime—and especially not during a Pennsylvania winter. The constituents of western Pennsylvania did not send me to Washington to participate in ideological shell games that employ a bait and switch mentality. All of us were sent here to ultimately improve the quality of life for those we represent.

I urge for continued funding for the proven successful Low-Income Home Energy Assistance Program.

CONGRESS MUST CORRECT THE PROBLEM OF FRIVOLOUS LAWSUITS

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

Mr. LATOURETTE. Mr. Speaker, as a lawyer, I am the last person to suggest that everybody in my profession is a money-grubbing, scum-sucking toad. The actual figure is only about 73 percent.

Ha ha, I am of course just pulling the Speaker's honorable leg. The vast majority of lawyers are responsible professionals, as well as, in many ways, human beings.

But we really do need to do something about all these frivolous lawsuits. We have reached the point where a simply product such as a stepladder has to be sold with big red warning labels all over it, telling you not to dance on it, hold parties on it, touch electrical wires with it, hit people with it, swallow it, and so forth, because some idiot somewhere, some time, actually did these things with a stepladder, got hurt, filed a lawsuit—and won.

My feeling, Mr. Speaker, is that anybody who swallows a stepladder deserves whatever he gets. And I am sure the vast majority of the American people would agree with me. The minority would probably sue.

REQUESTING THE NAMES OF SOCIALISTS ON NEWSPAPER EDITORIAL BOARDS

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

Mr. FROST. Mr. Speaker, I read with interest comments by Speaker GINGRICH which appeared in yesterday's newspapers about the editorial boards of many of our Nation's newspapers.

The Washington Post reported that Speaker GINGRICH told a group of business executives Monday night that many newspaper editorial boards contain Socialists. Speaker GINGRICH has been accused recently of exaggerating the truth or making plain misstatements of facts.

Quite frankly, I do not know whether the Speaker is telling the truth in this instance or not. But I am willing to give the Speaker the benefit of the doubt. According, I call on Speaker GINGRICH to name names. Who are the Socialists on the editorial board of the Dallas Morning News? Who are the Socialists on the editorial board of the Fort Worth Star Telegram? Who are the Socialists on the editorial board of the Houston Post? Who are the Socialists on the editorial board of the San Antonio Express News? Who are the Socialists on the editorial board of the Austin American-Statesmen? Who are

the Socialists on the editorial board of the New Orleans Times Picayune? Who are the Socialists on the editorial board of the Daily Oklahoman?

If you are telling the truth, name names, Mr. Speaker. We are all waiting.

WELFARE THAT WORKS

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

Mrs. WALDHOLTZ. Mr. Speaker, our current welfare system reminds me of the old adage about a certain road that was paved with good intentions. My home State of Utah decided to create its own new program that has gone from good intentions to good results.

In order to create its own program, Utah had to get 48 Federal policy waivers, which allowed the State to design a program that fits our citizens, gives innovation a chance, and promotes learning and independence. Utah's program, SPED—the single parent employment demonstration project—moves the focus of welfare from income maintenance to increasing family income. And let me tell you, it works.

In Salt Lake City alone, after 18 months under this new program, the average AFDC grant went from $352 per month down to $149 per month while the average family income has climbed from $697 per month to $795 per month. And 35 percent of all participants have left the system due to increased earnings.

This program works because it is based on the belief that the State is the most effective tool for providing these services. I hope Congress will give other States the flexibility to find programs that work for them as well as SPED works for Utah.

LET US BALANCE THE BUDGET WITHOUT PLAYING POLITICAL PROMISING GAMES WITH TAX CUTS

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

Mr. ROEMER. Mr. Speaker, yesterday Alan Greenspan testified before Congress and said that the dollar plunged to historic lows due in large part to the Federal budget deficit. We in the House passed a constitutional amendment to balance the budget.

We need to make the courageous decisions to help balance that budget, but tax cuts, further taking away from lunch programs for hungry children across America, taking food out of their mouths to pay for a tax cut, is not the way to go.

Recently before the Committee on the Budget such economists as Stephen Roach and Roger Brinner both said tax cuts are a bad idea. Let us make the courageous decisions and provide all American people with the best tax cut we can. That is to reduce the deficit. That will create better interest rates to buy a new home, to refinance a home, and to buy a car.

Let us not play political promising games with tax cuts. Let us make courageous decisions to balance the budget.

NOW IS THE TIME TO BALANCE THE BUDGET

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

Mr. BASS. Mr. Speaker, the Committee on the Budget yesterday heard from Federal Reserve Board Chairman Alan Greenspan, and when he was asked by the chairman of the Committee on the Budget why it is important that we balance the budget, he said, and I quote "I would say * * * in the short run * * * that there would be some strain leading to a period in which I think their," meaning the people of this country, "real incomes and purchasing power would significantly improve, and I think the concern, which I find very distressing, that most Americans believe that their children will live at a standard of living less than they currently enjoy, that that probability would be eliminated and that they would look forward to their children doing better than they."

Mr. Speaker, we have heard a lot of talk this morning about children and the welfare of children. If we really care about the future of the children in this country, in whose millions of little hands the future of this country will lie, then we will move as a body to balance our budget, and balance it by the year 2002.

This is spoken by the Chairman of the Federal Reserve Board. If there was ever a need to move forward, the time is now.

LET US NOT QUESTION PARENTS FIGHTING FOR THEIR CHILDREN'S NUTRITION

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

Mr. MENENDEZ. Mr. Speaker, on Monday, demonstrators protesting the Republican cuts in school lunch and child nutrition programs raised their voices in opposition loud enough to scare the Speaker away.

What was most interesting however, was not that the Speaker refused to confront his critics, but what the Speaker's later comments revealed about the way his mind works. With regard to the protesters, the Speaker asked, "Why weren't they at work?"

I have never heard the Speaker ask why bankers, who visit Washington to lobby for deregulation, were not at work.

I have never heard the Speaker ask why high rollers who come to lobby for capital gains tax cuts were not at work.

I have never heard the Speaker ask why the people who pay $50,000 for an exclusive fundraising dinner for one of his pet projects were not at work.

Mr. Speaker, you gave us a rare look at your darkest, most privately held thoughts with that comment. Chanting with bullhorns may not qualify as dialog, but neither do comments such as yours.

Let us not question those parents fighting for their children's nutrition.

FEDERAL FOOD ASSISTANCE

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

Mrs. CLAYTON. Mr. Speaker, from Tuesday morning into the wee hours of yesterday morning, the Committee on Agriculture marked up title V of the Personal Responsibility Act.

That bill is now poised for consideration on the House floor.

Leadership of the committee is to be commended for eliminating the mandate for block granting the Food Stamp Program.

A State option on block grants, however, remains and will be an issue on the floor.

Also, during markup, the committee accepted my amendment which requires those who must work for food stamps to be paid at least the minimum wage for their labor.

The Agriculture Committee was also wise to take that course.

But, with action by other committees, the block grant issue continues to loom large and will be hotly contested during floor consideration.

I urge my colleagues to stand up against nutrition program block grants. Welfare reform without that reform will hurt the poor.

EXTENSION OF WAIVER OF APPLICATION OF EXPORT CRITERION OF THE ATOMIC ENERGY ACT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed.

To the Congress of the United States:

The United States has been engaged in nuclear cooperation with the European Community (now European Union) for many years. This cooperation was initiated under agreements that were concluded in 1957 and 1968 between the United States and the European Atomic Energy Community

(EURATOM) and that expire December 31, 1995. Since the inception of this cooperation, EURATOM has adhered to all its obligations under those agreements.

The Nuclear Non-Proliferation Act of 1978 amended the Atomic Energy Act of 1954 to establish new nuclear export criteria, including a requirement that the United States have a right to consent to the reprocessing of fuel exported from the United States. Our present agreements for cooperation with EURATOM do not contain such a right. To avoid disrupting cooperation with EURATOM, a proviso was included in the law to enable continued cooperation until March 10, 1980, if EURATOM agreed to negotiations concerning our cooperation agreements. EURATOM agreed in 1978 to such negotiations.

The law also provides that nuclear cooperation with EURATOM can be extended on an annual basis after March 10, 1980, upon determination by the President that failure to cooperate would be seriously prejudicial to the achievement of U.S. nonproliferation objectives or otherwise jeopardize the common defense and security, and after notification to the Congress. President Carter made such a determination 15 years ago and signed Executive Order No. 12193, permitting nuclear cooperation with EURATOM to continue until March 10, 1981. Presidents Reagan and Bush made similar determinations and signed Executive orders each year during their terms. I signed Executive Order No. 12840 in 1993 and Executive Order No. 12903 in 1994, which extended cooperation until March 10, 1994, and March 10, 1995, respectively.

In addition to numerous informal contacts, the United States has engaged in frequent talks with EURATOM regarding the renegotiation of the U.S.-EURATOM agreements for cooperation. Talks were conducted in November 1978; September 1979; April 1980; January 1982; November 1983; March 1984; May, September, and November 1985; April and July 1986; September 1987; September and November 1988; July and December 1989; February, April, October, and December 1990; and September 1991. Formal negotiations on a new agreement were held in April, September, and December 1992; March, July, and October 1993; June, October, and December 1994; and January and February 1995. They are expected to continue.

I believe that it is essential that cooperation between the United States and EURATOM continue, and likewise, that we work closely with our allies to counter the threat of proliferation of nuclear explosives. Not only would a disruption of nuclear cooperation with EURATOM eliminate any chance of progress in our negotiations with that organization related to our agreements, it would also cause serious problems in our overall relationships. Accordingly, I have determined that failure to continue peaceful nuclear cooperation with EURATOM would be seriously prejudicial to the achievement of U.S. nonproliferation objectives and would jeopardize the common defense and security of the United States. I therefore intend to sign an Executive order to extend the waiver of the application of the relevant export criterion of the Atomic Energy Act until the current agreements expire on December 31, 1995.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 9, 1995.*

COMMUNICATION FROM THE HONORABLE EDWARD J. MARKEY, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable EDWARD J. MARKEY, a Member of Congress:

Washington, DC, March 7, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L(50) of the Rules of the House that a staff person in my office has received a subpoena for testimony and documents concerning constituent casework. The subpoena was issued by the Middlesex County Probate and Family Court of the Commonwealth of Massachusetts.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

EDWARD J. MARKEY,
Member of Congress.

□ 1050

COMMUNICATION FROM THE HONORABLE KWEISI MFUME, MEMBER OF CONGRESS

The SPEAKER pro tempore (Mr. SHAYS) laid before the House the following communication from the Honorable KWEISI MFUME, a Member of Congress:

Washington, DC, March 8, 1995.

Hon. NEWT GINGRICH,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you pursuant to Rule L (50) of the Rules of the House that a member of my staff has been served with a subpoena issued by the United States District Court for the Eastern District of Virginia for materials related to a civil case.

After consultation with the General Counsel, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

KWEISI MFUME,
Member of Congress.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 109 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 109

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 further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes. No further general debate shall be in order. The bill shall be considered for amendment under the five-minute rule. In lieu of the amendment recommended by the Committee on the Judiciary, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of H.R. 1075. That amendment in the nature of a substitute shall be considered as read. No amendment to that amendment in the nature of a substitute shall be in order except those specified in the report of the Committee on Rules accompanying this resolution. Each amendment may be offered only in the order specified in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. At the conclusion of 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. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Georgia [Mr. LINDER] is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas [Mr. FROST], pending which I yield myself such time as I may consume.

During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, today we continue our historic debate that will restore sanity to our legal system. Over the next 2 days, we will take the first crucial steps toward limiting the significant costs on the U.S. economy that continue to force manufacturers to fire workers and withdraw products from the market, including medical devices

and medication available in most of the world, sadly resulting in preventable deaths. For too long, this Nation has capitulated to the power of Ralph Nader and the trial lawyers. It is high time that we level the playing field. The full consideration of H.R. 956 will allow this body to consider a wide range of issues designed to bring common sense and personal responsibility back to our courts.

The modified closed rule reported by the Rules Committee will allow the House to fully consider the significant issues raised by the bill H.R. 956. Yesterday's rule already provided for 2 hours of general debate. Today, House Resolution 109 first provides for consideration under the 5-minute rule of an amendment in the nature of a substitute consisting of the text of H.R. 1075. This bill represents the combined efforts of the Judiciary Committee and Commerce Committee to create a comprehensive, consensus bill that moves our legal system toward more rational behavior. In addition, the rule makes in order 15 amendments designated in the Rules Committee report. Each of these amendments is debatable only for the time specified in the report, equally divided and controlled by the proponent and an opponent of that particular amendment.

Finally, the rule provides a motion to recommit, with or without instructions, which will give the minority an additional opportunity to offer any amendment which complies with the standing rules of the House.

No Member is ignorant of these proposals to save our legal system, and it is not as if these proposals have been designed overnight. The common-sense legal reforms were presented on September 27, the bill was introduced on the opening day of this Congress, both the Judiciary and Commerce Committee held days of hearings, and many of these proposals have been studied and under consideration in Congress for decades.

Mr. Speaker, this rule is a fair rule. The Rules Committee received 82 amendments, many of which were duplicative and overlapping in their scope. House Resolution 109 allows for 15 amendments which will thoroughly address every major issue presented by this bill. I also believe that the Rules Committee has been extraordinarily fair and prudent in that minority amendments outnumber majority amendments by a count of 8 to 6, with one bipartisan amendment.

As I stated, many duplicative amendments were offered to the Rules Committee, and I am pleased that 15 distinct amendments to this bill will be considered on the House floor in the coming days. Chairmen HYDE and BLILEY, and many minority members, asked for sufficient time to debate the important sections of H.R. 956. That is exactly what we have done under this rule.

Almost one dozen amendments were presented to the Rules Committee that either increased the cap on punitive damages or deleted the cap entirely. The rule adequately provides for debate on the Furse amendment which would strike the cap on punitive damages. I would also add that the minority will have an additional chance to offer an amendment on punitive caps during the motion to recommit.

A number of Members expressed concerns about the increased standards in the burden of proof in the law of evidence, and the rule allows the gentleman from North Carolina [Mr. WATT] with an opportunity to strike the new clear-and-convincing-evidence standard.

Minority Members also argued that the provision to eliminate joint liability for noneconomic damages in product liability cases would harm certain plaintiffs. While I personally believe that we protect plaintiffs and enact reasonable reforms in this provision, the rule enables the gentlewoman from Colorado [Mrs. SCHROEDER] the opportunity to delete that section.

The rule also provides for meaningful debate on significant issues ranging from:

An amendment offered by Mr. SCHUMER that prevents the sealing of court documents in product liability cases.

An amendment offered by Mr. GEREN to clarify liability rules for persons who rent or lease products.

An amendment offered by Representatives OXLEY, BURR, and TAUZIN that exempts medical device manufacturers from punitive damages when the product in question has been approved by FDA.

After consideration of 14 amendments, those Members who wish to limit the scope of the bill will have the opportunity to vote on an amendment offered by Mr. SCHUMER that would put a 5-year sunset on titles I through III.

As attested to by the number and extent of amendments made in order, this is an equitable rule that permits more minority amendments that—if passed by the House—would extensively alter the original bill. I urge my colleagues to save our legal system, end the punitive tax on the American people, and support this rule.

Mr. Speaker, I have a rather unusual step, an amendment to the rule, and I want the other side to listen closely. It has come to my attention that the gentleman from Texas, Mr. PETE GEREN, and the gentleman from California, Mr. COX, both of whose amendments were included in the rule, have expressed their interest in revising their amendments.

First, my amendment to the resolution makes a technical change to clarify the definition of product seller in the amendment numbered 1 in the report, offered by Mr. GEREN.

Second, my amendment allows for a more substantive change in the amendment numbered 12 in the report which was offered by Mr. COX. This amendment, as it currently reads, would cap noneconomic damages at $250,000 for all civil cases. The revised amendment which I am offering to the House provides for a cap on noneconomic damages at $250,000 and limits its application to health care liability actions only.

The reason for this is that shortly before the Rules Committee meeting, a copy of a revised version of the Geren amendment No. 25 was received by the Committee. Since the change could be considered a substantive one, Representative GEREN's staff was advised instead to seek unanimous consent on the House floor to modify his amendment.

Shortly after the Rules Committee ordered the rule reported, a request was received from Representative COX's office that he be allowed to offer a modified version of the Cox amendment No. 51. Again, Representative COX was advised to seek unanimous consent in the House to offer a modified version of the amendment.

However, it became clear from the tone of the debate on the first rule on H.R. 956 that the climate on the floor would not be hospitable for any such unanimous-consent requests.

Consequently, after consulting with the majority leadership, a decision was made to offer an amendment to the rule that provides for the consideration of both the Geren and Cox amendments in their modified forms. In both instances, the modifications are germane and no special waivers are required.

To repeat, the Geren language has been changed to more precisely identify a renter or leaser and the Cox amendment was made to narrow the scope of noneconomic awards in civil actions to those dealing with medical malpractice only.

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

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

Mr. SOLOMON. I thank the gentleman for yielding. I would just say that we have a Committee on Rules meeting starting in just a few minutes on term limitations in the Committee on Rules at 11.

I commend the gentleman from Georgia [Mr. LINDER], such a valuable member of the Committee on Rules, and the gentlewoman from Ohio [Ms. PRYCE], because a lot of work has gone into trying to structure a rule that would allow us to have a free and fair debate on these issues.

The gentleman has outlined that we have covered all of the specific areas in the bill. There were 82 amendments filed to the bill and the fact is that working with the Democrats and, as the gentleman has alluded to, even with the gentleman from Texas, Mr. PETE GEREN, who had sought a modification in his amendment since he

came to the Committee on Rules too late to request that, we certainly have taken all these into consideration.

I would just hope that every Republican votes for the amendment that the gentleman is offering even though it is a bipartisan amendment, and I hope that they vote for this rule. It is terribly important that we get this legislation on the floor today and that it pass by 3 p.m. on Friday.

Again, I repeat, I urge every Republican to vote for this amendment to the rule.

Mr. LINDER. Mr. Speaker, I thank the gentleman.

Mr. Speaker, the amendment is at the desk, it has been made available to the minority side, and I reserve the balance of my time.

The SPEAKER pro tempore. Does the gentleman from Georgia offer the amendment?

Mr. LINDER. Yes, Mr. Speaker.

AMENDMENT OFFERED BY MR. LINDER

Mr. LINDER. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. LINDER:

Page 2, line 11, insert the following before the period: ", provided that the amendments numbered 1 and 12 printed in that report shall be considered in the forms specified in section 2 of this resolution"; and

At the end of the resolution add the following:

SEC. 2. (a) The amendment numbered 1 in the report accompanying this resolution shall be considered in the following form:

Page 7, insert after line 3 the following:

"(c) Notwithstanding any other provision of law, any person, except a person excluded from the definition of product seller, engaged in the business of renting or leasing a product shall be subject to liability pursuant to subsection (a) of this section, but shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.".

(b) The amendment numbered 12 in the report accompanying this resolution shall be considered in the following form:

Page 19 redesignate section 202 as section 203 and after line 19 insert the following:

SEC. 202. LIMITATION ON NONECONOMIC DAMAGES IN HEALTH CARE LIABILITY ACTIONS.

(a) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—In any health care liability action, in addition to actual damages or punitive damages, or both, a claimant may also be awarded noneconomic damages, including damages awarded to compensate injured feelings, such as pain and suffering and emotional distress. The maximum amount of such damages that may be awarded to a claimant shall be $250,000. Such maximum amount shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought with respect to the health care injury. An award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the limitation on noneconomic damages, but an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment or by amendment of the judgment after entry. An award of damages for noneconomic losses in excess of $250,000 shall be reduced to $250,000 before accounting for any other reduction in damages required by law. If separate awards of damages for past and future noneconomic damages are rendered and the combined award exceeds $250,000, the award of damages for future noneconomic losses shall be reduced first.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any health care liability action brought in any Federal or State court on any theory or pursuant to any alternative dispute resolution process where noneconomic damages are sought. This section does not create a cause of action for noneconomic damages. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages. This section does not preempt any State law enacted before the date of the enactment of this Act that places a cap on the total liability in a health care liability action.

(d) DEFINITIONS.—As used in this section—

(a) The term "claimant" means any person who asserts a health care liability claim or brings a health care liability action, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent or a minor.

(b) The term "economic loss" has the same meaning as defined at section 203(3).

(c) The term "health care liability action" means a civil action brought in a State or Federal court or pursuant to any alternative dispute resolution process, against a health care provider, an entity which is obligated to provide or pay for health benefits under any health plan (including any person or entity acting under a contract or arrangement to provide or administer any health benefit), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, in which the claimant alleges a claim (including third party claims, cross claims, counter claims, or distribution claims) based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, or defendants or causes of action.

Page 17, line 10, insert "AND OTHER" after "PUNITIVE".

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

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

Mr. MOAKLEY. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Clerk completed the reading of the amendment.

□ 1045

Mr. FROST. I yield myself such time as I may consume. It is my intention to yield in just a few seconds to the ranking member of the Committee on rules since he has to then go up to the committee for a hearing. After he completes his statement I will reclaim my time because I would like to give the traditional opening statement.

I would point out, Mr. Speaker that what we have just witnessed is one of two things. Either it is incomplete staff work on the part of the majority side because of the enormous pressure, time pressure being put on their staff by the majority Members, or it is bait and switch. I do not know which it is. But we are under a very unusual procedure where we are being asked to amend on the floor a rule granted in the Rules Committee yesterday.

Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. MOAKLEY], the distinguished ranking member of the Rules Committee.

Mr. MOAKLEY. Mr. Speaker, I would like to have the attention of the gentleman from New York [Mr. SOLOMON]. I know that the gentleman has got scheduled hearings on the term limit bill up before the committee this morning. Since we are not going to take it up until the end of the month, and we are discussing two major amendments to the rules that are taking place here on the floor, does the gentleman not think we should be on the floor making sure this thing comes out right this time rather than going up to the committee to take evidence and term limits where we have so much time in order to put it together?

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

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

Mr. SOLOMON. The gentleman's points are well taken. We will delay the Committee on Rules meeting until 1 minute after the final vote on final passage of this rule. Is that fair, sir?

Mr. MOAKLEY. I think this is very nice. I thank the gentleman.

Mr. SOLOMON. And we will notify everyone involved.

Mr. MOAKLEY. Mr. Speaker, again, this rule is the ultimate closed rule. They say that they allowed 8 Democratic amendments to be part of the rule, but they picked out the 8; we did not. That would be like the Republican Party picking the Democratic Members to serve on the Committee on Rules. I think we have to balance this thing out.

I think that the Speaker, NEWT GINGRICH, on November 11, 1993, said and I quote, "We very specifically made the decision early on in our Contract With America that we would bring up all 10 bills under open rules."

I do not know where they are. We know the definition of rules has been changed this year from the definition that we had last year. So I would like to just put Members on notice to listen quickly and if the Committee on Rules had enough time to do the job assigned to it up in the rules Committee we would not have these two major amendments to the rule here on the floor. This is a highly complicated bill and should have been treated in the

committees of authorization or else on the Committee on Rules.

So I urge my colleagues to defeat the previous question and make in order the McCollum-Oxley-Gordon amendment. This amendment by two Republican subcommittee chairmen and one moderate Democrat will raise the cap on damages to $1 million, and as the Republican leadership knows very well, will ultimately pass if it is made in order.

Mr. Speaker, Republicans are breaking their promises to do open rules on all of the contract items and to do 70 percent open rules in general.

Mr. Speaker, I agree with most Americans that we have too many lawsuits in this country, but I am not aware of some huge product liability crisis in the United States. I know we have a big, huge, crime problem out there. I know our health care system needs work. I know American Children need school lunches, but I have not heard anyone say there has been a product liability crisis in the United States.

The fact is juries rarely award punitive damages. In the 25 years between 1965 and 1990, punitive damages were awarded in only 355 cases. So why the cap, particularly since my colleagues have been so eager to defend the States, rights? My Republican colleagues said that we needed to empower the States but today's bill preempts the States. So, which is it? Do the Republicans want to empower the States or do they want to empower the Federal Government?

Mr. Speaker, in terms of Republican consistency, the only consistent Republican effort is to give Wall Street a handout at the expense of Main Street.

My colleagues are quick to point out the trial lawyers and name them as the bad guys. But let us make sure we also remember the people that are represented by the trial lawyers, the elderly, women, and middle-income Americans.

Mr. Speaker, I have very serious concerns about the effect this bill will have on those people and I hope they will be resolved. But that will be difficult, Mr. Speaker. Republicans have broken their open rule promise again. I understand my colleagues' hurry to finish the contract and start that April recess, but I think the American people will support us if we stay just a little bit longer and allow Members to have their input into this very serious legislation.

I may add, Mr. Speaker, that just 2 days ago my dear friend from California, Mr. DREIER, stood on this floor and said that Republicans imposed time caps on bills because they did not want to pick and choose among amendments. Today, they have picked and chosen between amendments. What a difference a day makes.

It looks like Republicans are taking very seriously Ralph Waldo Emerson saying "a foolish consistency is the hobgoblin of little minds." They are as consistent as the water rates in Massachusetts and they are still breaking promises.

Mr. Speaker, I would urge my colleagues to defeat the previous question and make the McCollum-Oxley-Gordon amendment in order.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume, and I would like to at this point continue my opening statement.

Mr. Speaker, I rise in strong opposition to this rule.

Mr. Speaker, this is a closed rule. This rule doesn't meet the standards set by the infamous Contract With America, nor does it meet the promises of the Speaker or the chairman of the Rules Committee. We were promised free and open debate in the House. This rule doesn't even come close to meeting that promise.

Mr. Speaker, I would like to read from the January 4, 1995, CONGRESSIONAL RECORD quoting the Speaker of the House, Mr. GINGRICH, on the first day of the session, Page H6,

> We then say that within the first 100 days of the 104th Congress we shall bring to the House floor the following bills, each to be given full and open debate, each to be given a full and clear vote, and each to be immediately available for inspection.

Words of the Speaker of the House.

Mr. Speaker, I am sure my Republican colleagues will protest my characterization of this rule and will complain that when the Democrats were in the majority that the Rules Committee cut off debate through the use of modified or closed rules.

Mr. Speaker, that argument is not the point. The point, Mr. Speaker, is that the Republican party promised—promised—that debate in the House of Representatives would be open.

Mr. Speaker, the Rules Committee majority voted down 17 amendments to the chairman's mark last night. The majority on the Rules Committee even denied the gentleman from Tennessee [Mr. QUILLEN] the opportunity to offer an amendment to this legislation. The majority opposed giving the House the opportunity to vote on amendment relating to punitive damages in the case of manufacturers or product sellers who were aware of an existing defect in that product. Mr. Speaker, is this free and open debate?

Mr. Speaker, 82 amendments were submitted to the Rules Committee for inclusion in the rule. Fifteen—15 amendments, Mr. Speaker—were made in order by the Rules Committee majority. The gentleman from Georgia explained during our hearing last night that a sincere effort was made to include every major issue in the rule. Our distinguished chairman opposed including any additional amendments in the rule because the House must finish consideration of this legislation, which is a major upheaval of our civil court system in the country, by 3 o'clock tomorrow afternoon. Mr. Speaker, this does not strike me as an open process.

And, Mr. Speaker, I have yet another example of how this rule has been shut down. An amendment which both the chairman of the committee of jurisdiction, Mr. BLILEY, and the gentleman from Massachusetts, Mr. MARKEY had agreed would be included in the rule, was not on the list presented to the Rules Committee members last night. Chairman SOLOMON explained to us that it was missing because of negotiations between staff—between staff, Mr. Speaker—and that he intends to ask unanimous consent to permit its consideration.

Mr. Speaker, I not only oppose this rule, but I will oppose the previous question. If the previous question is defeated, it is my intention to offer an amendment to the rule which will permit the consideration of two amendments relating to punitive damages caps. I will offer an amendment to include the McCollum amendment which raises the cap to $500,000 and the Oxley-Gordon amendment to raise those limits to $1 million.

Mr. Speaker, I urge defeat of the previous question.

Mr. Speaker, I include for the RECORD a chart of floor procedure on rules in the 104th Congress as follows:

FLOOR PROCEDURE IN THE 104TH CONGRESS

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 1	Compliance	H. Res. 6	Closed	None.
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed; contained a closed rule on H.R. 1 within the closed rule	None.
H.R. 5	Unfunded Mandates	H. Res. 38	Restrictive; Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4; Pre-printing gets preference.	N/A.
H.J. Res. 2	Balanced Budget	H. Res. 44	Restrictive; only certain substitutes	2R; 4D.
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 2	Line Item Veto	H. Res. 55	Open; Pre-printing gets preference	N/A.
H.R. 665	Victim Restitution Act of 1995	H. Res. 61	Open; Pre-printing gets preference	N/A.
H.R. 666	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open; Pre-printing gets preference	N/A.
H.R. 667	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 668	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open; Pre-printing gets preference; Contains self-executing provision	N/A.
H.R. 728	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.

FLOOR PROCEDURE IN THE 104TH CONGRESS—Continued

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 7	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 729	Death Penalty/Habeas	N/A	Restrictive; brought up under UC with a 6 hr. time cap on amendments	N/A.
S. 2	Senate Compliance	N/A	Closed; Put on suspension calendar over Democratic objection	None.
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed.	H. Res. 88	Restrictive; makes in order only the Gibbons amendment; waives all points of order; Contains self-executing provision.	1D.
H.R. 830	The Paperwork Reduction Act	H. Res. 91	Open	N/A.
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive; makes in order only the Obey substitute	1D.
H.R. 450	Regulatory Moratorium	H. Res. 93	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 1022	Risk Assessment	H. Res. 96	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 926	Regulatory Flexibility	H. Res. 100	Open	N/A.
H.R. 925	Private Property Protection Act	H. Res. 101	Restrictive; 12 hr. time cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment, waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text.	1D.
H.R. 1058	Securities Litigation Reform Act	H. Res. 103	Restrictive; 8 hr. time cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germanes against it.	1D.
H.R. 988	The Attorney Accountability Act of 1995	H. Res. 104	Restrictive; 7 hr. time cap on amendments; Pre-printing gets preference	N/A.
H.R. 956	Product Liability and Legal Reform Act	H. Res. 109	Restrictive; makes in order only 15 germane amendments and denies 64 germane amendments from being considered.	8D; 7R.

Note: 75% restrictive; 25% open. These figures use Republican scoring methods from the 103rd Congress. Not included in this chart are three bills which should have been placed on the Suspension Calendar. H.R. 101, H.R. 400, H.R. 440.

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

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from New Mexico [Mr. SCHIFF].

Mr. SCHIFF. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time and I especially want to commend his integrity because he knew that I sought this time to criticize the proposed rule from the Committee on Rules. However, I do have to say that although I am critical of the rule, I still intend to vote for it for this reason: I think the issue of legal reform is very important. I think it needs to get moving in the House of Representatives, and the issue with which, the matters with which I take issue can be addressed elsewhere in the process. Any bill that begins has a long way to go before it ever is proposed to the President for signature.

I want to say I do not criticize the rule because it simply does not include an amendment that I offered. I offered an amendment to the balanced budget amendment which was not accepted by the Committee on Rules. Nevertheless, they proposed a fundamentally fair and open exchange of views on the balanced budget amendment which I think was perfectly appropriate even if it did not happen to include an amendment that I offered.

□ 1100

In this particular case, however, as I look at the amendments which have been made in order in this bill, it appears to me that amendments have been allowed which either the Committee on Rules believes will not be accepted by a majority in the House of Representatives or they do not care if a majority in the House of Representatives adopts these amendments. And those rules, those amendments which might change this bill in a way that the Committee on Rules does not wish it changed were not even allowed to be offered on the House floor.

There has already been reference to a proposed amendment from the gentleman from Tennessee [Mr. QUILLEN]. There has been references to a bipartisan amendment that would deal with raising the damage caps on punitive damages, not taking the caps away, which I think the majority will not support, but simply raising the caps, which I think a majority would support.

Here is where I believe my proposed amendment is highly relevant. This bill is being argued in terms of a products liability bill, but it is only products liability in part. Section 1 of this bill deals with products liability. Title II, dealing with punitive damages, is not limited to products liability. In fact, it is not limited to anything.

According to title II of this bill, as it is now written, the Federal Government is going to take over the State courts with respect to punitive damages in every single case, no matter what is the subject of the case.

In other words, if two individuals get into a first fight on the front lawn between their houses, Federal law is going to govern how that lawsuit that might arise out of that takes place. Now, particularly to my Republican colleagues, let me say first I think that violates philosophically everything we have been arguing for the last 2 months. We have said the States can handle police grant block grants, we have said the States can handle child nutrition programs and now we are saying the States for some reason cannot handle the court system.

Further, we set the precedent that running the courts should be a Federal issue. And some day a Congress of a different philosophic bent can say there will be a Federal law on punitive damages which is there will be no caps on punitive damages anywhere and we will overrule and take away those existing punitive damage caps which now exist. If you can do one, you can do the other.

My amendment will simply have said the punitive damages proceedings, whatever it is, applies only to products liability.

I want to conclude with one respectful exception to the opening statement of the gentleman from Georgia [Mr. LINDER] which has been said by a number of our leaders, which makes reference to Mr. Ralph Nader and the Trials Lawyers Association. That approach reminds me very much of the others side's saying we have to pass certain laws to send a message to the National Rifle Association. I just want to say on this floor that I have voted for and against the trial lawyers' positions and voted for and against the National Rifle Association position. We should pass laws that are good laws and not based on whether or not they are supported or opposed by any particular group.

I thank the gentleman again for yielding.

FURTHER MESSAGE FROM THE PRESIDENT

A further message in writing from the President of the United States was communicated to the House by Mr. Edwin Thomas, one of his secretaries.

PROVIDING FOR FURTHER CONSIDERATION OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the gentleman from Texas for yielding this time to me.

I am very honored to be able to follow the gentleman from New Mexico because I think he gave a very, very thoughtful approach to this rule.

Look, this bill is doing something very drastic. It is changing the entire legal system of this country as it has worked since the country began. And this bill has been written and rewritten and rewritten, and we do not even know who the final author is.

It has been like a fast-bill breeder reactor and a fast-amendment breeder reactor, and, as you see, they are now

changing the rule one more time because they want to change some more amendments.

I think really we must vote down this rule because we do not know what we are doing.

Let me emphasize again what the gentleman from New Mexico said about title II. This goes far beyond product liability. We are saying in title II the Federal Government knows best and we are going to preempt all sorts of State laws.

You heard some of them last night. In New Jersey they allow punitive damages against any person that sexually abuses a child. Well, if we pass this bill, we are going to put a cap on it. And in all sorts of States, they allow punitive damages for someone who has been killed by a driver under the influence of drugs or alcohol. Do you think we should put a cap on that and say they did not have any idea what they were doing?

Other States have put on punitive damages for people who are selling drugs to children. I am for those things. I do not think we have all the wisdom here. I think it is amazing we are going to run out and give the school lunch program to the States, which a lot of them were not asking for, and we are going to take away all of the things they tried to do if we pass title II here today.

I also must say, when we look at these amendments, there were very many amendments, as the gentleman from New Mexico said, that were not allowed that we know would have passed. And I think that is troubling.

There are other amendments that I certainly hope people listen to today because they are very important: the noneconomic damages, the "feelings" amendment, as they are calling it. Let me tell you, if someone's reproductive organs are destroyed, if their capacity to reproduce is destroyed, I think that goes way beyond feelings. And I know very few people who would look very favorably upon someone putting a punitive cap on what they could receive if someone intentionally did that.

We see instance after instance in this bill where we think it is not ripe for decision, where we really do need much more debate. And I think that the people assumed we would have some thoughtful application before we took a system that has been functioning for over 200 years and changed it, and changed it with such haste that we hardly know what we are doing and we are having to change the rule as it goes.

This is massive micromanagement, this is a closed rule. These are serious issues. There are limits on debate, limits on amendments, limits on everything. I hope people vote against this rule.

And I thank the gentleman for yielding the time.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. I thank the gentleman for yielding this time to me.

Mr. Speaker, in spite of the controversy and disagreements on the rule, the bill itself is a good one, and I urge all of my colleagues to support it.

Mr. Speaker, simply put, it is imperative that we bring some uniformity to tort law in respect to product liability. If we hope to compete in an equal marketplace, if we hope to protect our Nation's citizens without hamstringing our industries and our quality of life, we must meet this challenge squarely today.

We come armed with study after study documenting the adverse impact of widely varying State tort laws on competitiveness, innovation, and even safety: it's not working, it's broke and it's long past time to fix it.

Under our current system, we are, in effect, exporting American ideas. With outrageous liability awards hanging over their heads like the sword of Damocles, U.S. manufacturers often dare not bring much-needed, much-requested products to market. Mr. Speaker, our foreign competitors eagerly fill that gap.

They have not burdened themselves with the crushing product liability costs borne by U.S. manufacturers—and, in the end, consumers. Nowhere—not west of us on the Pacific rim nor east of us in the European Economic Community—are liability standards so onerous as they are in the United States.

Not least of all, we need this legislation's single, predictable set of rules to protect consumers—and we should emphasize that. None of us wants to write the common man out of the law, leaving him no redress in the courts. That's not the object of this bill. What we want to do is restore some balance between liability and accountability.

Rather than voiding the commonsense accountability of an injured party, this bill places the responsibility for accident prevention back where it belongs. Indeed, injured parties will have to bear some of that burden if they alter or misuse a product. Employers and employees alike will be encouraged to create a safer workplace.

Also, by bringing some balance back to the system, we free consumers from having to pay for accidents by individuals who abuse illegal drugs or misuse alcohol.

Predictability. Uniformity. Fairness. This legislation will bring a certainty to our tort laws that has been long missing. It will help to stop the erosion of our Nation's competitiveness and protect the consumer.

We can promise nothing more and we should accept nothing less.

Again, I urge support of the bill.

Mr. FROST. Mr. Speaker, for purpose of debate only, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, I urge the House to defeat the previous question, to allow an amended rule which would allow three amendments, all of them Republican amendments.

The gentleman from Florida, Mr. MCCOLLUM's amendment to raise the cap on all punitive damage. The bill does not just restrict punitive damages caps to products liability. It covers every single State's punitive damages remedy that exists, to raise that cap from $250,000 to $500,000. Also, to allow the Oxley-Gordon amendment, which provides a million-dollar alternative cap for all punitive damages remedies. And the Schiff amendment, which limits the punitive damages cap to what every single speaker who comes down here on the majority side talks about, which is product liability.

The bill before us provides a punitive damages cap for everything. If I were to have a product liability bill in title I and nationalize the steel industry in title II and I refused to discuss title II, I would be somewhat disingenuous. I suggest that as Republican after Republican comes down on this legislation and talks about product liability, never discusses the other issues, they are wrong.

What did the Committee on Rules do here? Why is this so objectionable? I do not think you can have a product liability under an open rule.

I know the Republican promise. I think it was silly. I think they should be allowed to change that promise. You cannot consider everything on an open rule. I do not even mind that it is a very modified time-restricted closed rule and the majority of the 82 amendments filed are not considered.

But, in essence, what the Republicans in the Committee on Rules have done, what they are threatening to do if they adopt this rule, is to say, "Yes, there is the status quo, and some people just want to keep the status quo and do not want to change it." I guess that is the position of the trial lawyers.

Then there is what I consider the extreme of this bill and every amendment, which is somewhere between the status quo and the extreme of this bill offered by a Republican which has a chance to win will be denied a chance to be offered.

So that, in effect, what you are doing is what you have been yelling about the Democrats doing; you blocked amendments that could win on the House floor and you were so sanctimonious during the campaign and afterward, the outrage of what the Democrats did. "We had amendments that could win, but they would not let us offer them." That is what Mr. SCHIFF's amendment is, that is what Mr.

MCCOLLUM's amendment is, that is what the Oxley-Gordon amendments are; not to let all the Democratic amendments come in, but to let these three amendments come in.

I would urge the body to defeat the previous question and allow that very limited amendment to allow moderate proposals to come in.

When Mr. DREIER spoke yesterday, when my friend from California on the floor, he talked about letting ideas from the left and the right come in. They will not even let ideas from the center come in. And that is what those amendments are. They should be allowed.

I urge defeat of the previous question so that that amended rule may be offered.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentlewoman from Ohio [Ms. PRYCE].

Ms. PRYCE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am pleased to rise in support of this rule, and to compliment my friend from Georgia, Mr. LINDER, for his excellent description of this legislation.

This is a fair and responsible rule, Mr. Speaker, because it permits the House to consider 15 separate amendments reflecting a wide range of issues which are central to the product liability reform debate. Of those 15 amendments made in order, 8 are sponsored by Democrats, 6 by Republicans, and 1 is offered with bipartisan sponsorship. This rule should be even more palatable to many in this body due to the floor manager, Mr. LINDER's amendment to impose the caps on noneconomic damages to medical malpractice cases only.

On Tuesday, the Committee on Rules sat for nearly 7 hours to hear testimony from Members on a variety of amendments—83 in all—affecting many aspects of the bill, including economic and noneconomic losses, punitive damages, and joint and several liability, to name just a few.

Under this rule, Mr. Speaker, we have attempted to give ample time to the minority, and quite frankly, to the entire House, to discuss all of these critical areas, while eliminating overlapping or duplicative amendments.

Mr. Speaker, not every amendment I supported and fought for was adopted, but I believe that, all in all, the rule is fair.

□ 1115

Mr. Speaker, for nearly two decades Congress has grappled with the issue of products liability reform. Some say we are going too fast and we are going too far, but what we went too fast and too far on are the horrendous unchecked abuses over the past decade. Having been a jurist in my previous life, I can say without hesitation that there is room for commonsense legal reform in our system, especially in the area of product liability law. This bill seeks to restore common sense and fairness to product liability litigation by establishing uniform national standards in place of the patchwork system currently compromise of 50 separate State product liability laws.

Given the significant impact that product liability has upon interstate commerce, competitiveness, insurance cost and the lives of each and every American, the provisions in this legislation and the Federal action it endorses are not only warranted, but also very sound. My colleagues need look no further than the Constitution to see that action taken by this body to regulate interstate commerce is well within Congress' assigned duties.

Mr. Speaker, by adopting this fair and responsible rule, we can continue this week's process of enacting meaningful and reasonable changes to our civil justice system. Mr. Speaker, I urge my colleagues on both sides of the aisle to support this fair and reasonable rule.

Mr. FROST. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Speaker, I rise in strong opposition to this oppressive rule and urge Members to defeat the previous question.

It is no secret that this important legislation—that I have worked on for many years—is being grossly mishandled. There was but one subcommittee hearing on an extreme bill introduced 1 week earlier. There was no subcommittee markup—an important step in ensuring well-crafted and defensible legislation. We were given three completely different substitutes in as many days before the committee markup. Even before we received a draft of the committee report, a new bill—H.R. 1075—was introduced last week by Chairmen HYDE and BLILEY.

Before the ink was dry on H.R. 1075, Chairman SOLOMON stood here and announced the Rules Committee would meet this week "to grant a rule which may restrict amendments." It is clear the Republican leadership decided sometime ago they would ram this bill through without adequate debate and without regard to the rights of Members to debate the issues and offer amendments to the bill.

We asked for an open rule, but have been given a closed rule. The Republicans have picked amendments they want to debate and foreclosed the ability of Democrats to offer and debate other important ones. Moderate or bipartisan amendments have been completely excluded by this closed rule.

For example, Mr. OXLEY and Mr. GORDON filed an amendment to raise the cap on punitive damages to $1 million. And the gentleman from Florida, a member of the Judiciary Committee, Mr. MCCOLLUM, has an amendment to raise the cap to $500,000. Instead of making these moderate and bipartisan amendments in order, the Republicans are instead only giving the House the stark choice between an extreme $250,000 cap on the one hand and no cap at all on the other. It seems the Republican leadership was very worried that the Oxley-Gordon or McCollum amendments would pass. I urge Members to defeat the previous question to give the House an opportunity to vote on these middle ground alternatives.

Even worse, the rule allows Republican amendments that go far beyond product liability reform. For example, Mr. GEKAS' amendment on medical malpractice and Mr. COX's amendments to severely limit damages for pain and suffering in all State and Federal cases will be in order if this rule passes. There has not been one hearing on these amendments by this Congress. There has not been one day of committee meetings on these amendments by this Congress. No Member has been given adequate notice or time to consider these sweeping changes to our legal system.

This unfair and ill-advised process erodes bipartisan efforts. It produces legislation fraught with defects, inconsistencies and errors. This is not about common sense, as the authors of the bill want us to believe. It is the herd mentality in action.

I stand ready to work with all of my colleagues to craft fair, balanced, and appropriate legislation in this area. But the rule before us denies me and all Members of that opportunity. As all Members of this body know: we are here to legislate, not to punch holes in laminated cards.

We should be working to produce a products liability bill that we fully understand, in which we can take pride, and which we may defend without reservation. Vote "no" on the previous question so that we can consider the Oxley-Gordon and McCollum amendments on punitive damages. Vote "no" on the rule if the previous question is approved.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Speaker, Members of the House, simply put, the rule before us today is an outrage. It is a bill that is designed to make sure that we cannot moderate in any way in a very extreme bill. It goes far beyond what any reasonable legal scholar would ever have asked for, and it is part of a 20-year, the culmination of a 20-year campaign, by companies who have repeatedly been sued for putting dangerous products on the market to convince the public that somehow we should ignore the plight of the victims of their outrageous behavior and have sympathy instead for them, and they have been telling people on the radio ads and through their various propaganda sources that there is a big crisis with regard to product liability cases, but the fact is that in the hearings, which had witnesses chosen by the Republicans, we asked the witnesses, "Do any of you have a study to show that there is a big increase in the number of product liability cases?" And the answer was, no, nobody had any such study.

"Do any of you have a study to show there's a big increase in the number, in

the size, of the verdicts?" No, nobody had any such study, and in fact the studies that do exist tell us just the opposite.

The fact of the matter is that product liability cases filed represent a mere thirty-six one hundredths of a percentage point of the civil case load and ninety-seven thousands of a percentage point of the total case load in the State courts. In recent years the number of product liability filings has been steadily declining. The objective stories in the press in the last few days have indicated just that. Only 10 percent of the people who were sued, who were injured, ever used the tort system to seek compensation for their injuries anyway, and, finally, the number of fraud liability cases in Federal court declined 36 percent from 1985 to 1981.

Those are the facts. There are not any other facts, and yet, because the corporate friends of the Republican Party want to see their fondest dream come true, we have a rule before us today that says we are going to pass an extreme bill with no possibility of improving it.

What has been the hallmark of this campaign of propaganda? It has been the McDonald's coffee case. We were told all about what an outrage the McDonald's coffee case was. Well, let me tell my colleagues about a few McDonald coffee cases they did not know about.

This is a picture of an 11-year-old boy from South Carolina. The McDonald's coffee he was holding spilled and caused extreme scalding. The tests conducted during the trial showed that the coffee was 180 degrees when it was spilled even though it was poured 15 minutes earlier. Now their highest recommended temperature for the hot water heater is 140 degrees. That kid was badly hurt.

Here is a 1½-year-old child. This is a scalding of five—a 1½-year-old child that was scalded by McDonald's coffee.

As it turned out, there were 700 complaints of scalding to the McDonald's company. We never did hear about that in these radio ads; did we?

And here is the partial picture of perhaps the saddest story of all. This is a lady that was burned all the way down the front of her body, and in between her legs as well, in New Mexico. She spent the following month in the hospital. She remained wheelchair-bound after discharge and died 2 months later. She had extreme burns over all of her body.

This is a bill that would have prohibited these people from filing these cases. The truth will be told in the debate. I urge my colleagues to vote against the rule.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. COX], the author of the amendment for which we bent the rule.

Mr. COX of California. Mr. Speaker, I appreciate the opportunity to explain the need for amendment to the rule.

Obviously this amendment will change an amendment offered by one Democrat at the request of that Democratic Member and an amendment offered by one Republican at the request of that Republican.

In my case I have asked to narrow the scope of my amendment so that I can accommodate requests from Members on the other side of the aisle.

The gentleman who just spoke, I take it, is an opponent of tort reform in the Congress for a variety of reasons. He would not, presumably, have voted for an amendment that will cover all torts in all courts in terms of noneconomic damages. Likewise, Mr. Speaker, I imagine he would not vote for an amendment that covers medical malpractice which is a subset. But several Members on that side of the aisle have indicated that they very much share the desire for reducing health care costs by getting at the problem of health care lawsuits, which is a subset of the amendment that I originally offered.

So, Mr. Speaker, for that purpose, to focus the amendment more narrowly on a subject that is of broader concern in our Congress, I have asked to amend the rule to permit me to offer a more narrow amendment, and I appreciate the gentleman from the Committee on Rules offering me the opportunity to explain the purpose of my amendment.

Mr. FROST. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I would ask the gentleman who just spoke, the gentleman from California [Mr. COX] a question:

Mr. COX, why did you have to change the language between the time we considered the amendment yesterday afternoon in the Rules Committee and this morning? Why wasn't the language that you really wanted before the Rules Committee when we considered the rule yesterday afternoon?

Mr. COX of California. Mr. Speaker, will the gentleman yield?

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

Mr. COX of California. As life occurred, I ran into the chairman of the Committee on Rules when I was here on the floor yesterday debating the Securities Litigation Act 15 minutes after the Committee on Rules had concluded their business, and so I just missed the bus. If I had not been on the floor all day yesterday doing the Securities Litigation Reform Act, I would have been up in the Committee on Rules, but it is literally a matter of minutes here that I was unable to learn that the Committee on Rules had already finished business.

Mr. FROST. Mr. Speaker, I say to the gentleman, Well, Mr. COX, you have submitted an amendment to the Rules Committee; isn't that correct? Originally the amendment that we made in order yesterday was one that you had actually submitted?

Mr. COX of California. Yes, not this week, but last week under the deadline that was set by the Committee on Rules. That was preprinted in the RECORD last week.

Mr. FROST. I understand——

Mr. COX of California. And after last week, as a result of conversations with Members on the Democratic side, it was suggested to me that I narrow the scope of my amendment and that I not propose an amendment to Federal law that would cover tort litigation in all the 50 States.

Mr. FROST. Mr. Speaker, I would only ask the gentleman, Mr. COX, our meetings are publicly noticed. Members know when the Rules Committee is going to meet, particularly when we're going to vote to actually take final action on a rule, and other Members have not had difficulty in getting the language of their amendments to us in a timely manner——

Mr. COX of California. I would just respond to the gentleman by saying, "Of course this took place yesterday in the Rules Committee, and there was only one Member of Congress yesterday who had his legislation on the floor of the House, and it was this Member."

Mr. FROST. Mr. Speaker, for purpose of debate only, I yield 3 minutes to the gentleman from Tennessee [Mr. GORDON].

Mr. GORDON. Mr. Speaker, I rise today as a support of products liability reform, not only this year, but also in the past. Last year I joined the gentleman from Florida [Mr. BILIRAKIS] and many others in a bipartisan bill, House Resolution 1510, to reform products liability, and that is why I am so concerned today that we are met with this rule that is going to gag a true debate on products liability reform and maybe put it at jeopardy, and why is that?

Mr. Speaker, why is it that the Republican leadership is going to such extremes to break a contract that they had with the American people? That contract said there would be full and open debate on this issue. Why are they breaking that contract?

Are they breaking it because there is not enough time to debate this? Well, no, that cannot be the case because just last night they announced that we are not going to be in session on Friday—I am sorry; we are going to go out of session on Friday at 3 o'clock. We are not going to be in session on Monday, we are not going to be in session Tuesday until 5 o'clock, and we are not going to be in session next Friday. So clearly there is plenty of time to debate this next week. I think we can work more than 2 hours.

Is it because they are trying to stop some partisan shenanigans? No, that is not the case because they are also not

allowing some amendments from the gentleman from Ohio [Mr. OXLEY] who is a very capable chairman of the subcommittee that brought forth this bill. They are not allowing amendments by the gentleman from Florida [Mr. MCCOLLUM], their own Member, once again who is one of the subcommittee chairmen in the Committee on the Judiciary—as well as a number of other Republican amendments.

So why are they blocking, why are they gagging, this rule? Well, the only thing I can find out, Mr. Speaker, is they are gagging this rule because it is such an extreme bill that they are afraid to have debate for the American public to hear about it, for their own Members to come forward with their own amendments.

So I think the question today, and I know it is very difficult for Republicans when their leadership clamps down on them and says, "You've got to toe the line," and there may be threats and may be retribution. I know it is tough to be able to step forward. But today I think it is important because this is such an important bill.

Mr. Speaker, the questions before my friends and colleagues on the other side of the aisle are:

"Are they going to be lackeys for their leadership or conduits for their constituents?"

"Are they going to be robots for their rulers or defenders of their districts?"

"Are they going to be servants for their sovereign, or are they going to be supporters of their citizens?"

We will have that answer today, so I urge a defeat of this rule so that we can come back with a rule with open debate so that Democrats, and Republicans, and the American people can all participate in this and get a products liability reform that this country deserves and needs.

Mr. LINDER. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Speaker, I urge my colleagues to vote for this rule.

As the gentleman from California [Mr. COX] has stated so well, many Members across the aisle, and some on this side, have concerns that this legislation not go too far. One of the changes proposed in this rule will allow a previously allowed amendment to narrow its scope. I believe that there is support on both sides of the aisle for this change. It would seem to me that voting against this rule would actually limit many Members from voting for what they consider to be a better amendment.

I would urge my colleagues to support this rule. This rule is an improvement, not a gag.

Many Members want to debate a medical malpractice amendment because we know how it has added to the cost of our health care system in terms of defensive medicine. This rule will change that, will allow that to happen.

□ 1130

Mr. FROST. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. CONYERS].

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

Mr. CONYERS. Mr. Speaker, I rise in opposition to the rule.

The list of broken promises and pledges of the Republican majority continues to grow with every day.

First the new Republican majority refused to protect Social Security from cuts under the proposed balanced budget amendment contrary to the protection that the new Speaker promised Social Security would receive. The amendment went down as a result in the Senate.

Next, came the promise to return crime fighting tools to the States, a promise promptly revoked in the prison funding legislation which dictated strict eligibility requirements to the States that they could not meet.

And then came the promise for open rules, a promise which has been broken on nearly every major bill coming out of the Judiciary Committee. Sure, strict time limits that include voting time which allow for open amendments, are not quite closed rules. But the strictures of these time limits have repeatedly cut off meritorious amendments not just by Democrats but by Republicans as well.

And now on one of the most important bills affecting every American's right to be free from harm, every American's right to go to court to right a wrong done to them, we have the ultimate in closed rules. A rule that allows only a limited number of amendments on a highly technical and complicated body of law. A rule that irresponsibly allows amendments nongermane amendments limiting rights of medical malpractice victims, an issue which was not properly considered and refined in committee, to be hoisted onto members for a vote of first impression on the House floor.

This rule refused to make in order the vast majority of amendments that Judiciary Democrats requested be made in order. It refused my amendment making particularly egregious conduct subject to criminal liability, amendments dealing with reproductive rights, the statute of repose, making businesses play by the same rules as individuals, requiring insurance reporting.

How ironic it is that such a restrictive rule comes on a bill that is attempting to restrict people's fundamental rights. That's right, this is not a bill to clean up the legal system, as a matter of fact it is doubtful that this bill will cause any reduction in American litigation.

Rather this bill is about depriving people of fundamental rights, of rights to be free from unknowable harms in our midst, in the every day products we consume. This bill is about depriving people of legal rights when they are wronged. This bill is about telling manufacturers that its OK to produce children's pajamas which are flammable, pharmaceutical which will injure rather than cure, household products which will maim, because the deterrent purpose of punitive damages will be so limited that wrongdoers will only have to pay small sums in punitive damages relative to the huge profits they will reap.

And not only does this bill guillotine damages in Federal court, but it does so for State laws as well. That's the ultimate Washington power grab. Folks at home, listen up. This bill will severely limit punitive damages in your State laws for sexual abuse of children, victims of drunk driving, and criminals who sells drugs to children. Women of America, listen close. This bill says a male corporate executive who loses wages because of temporary incapacitation will probably get more damages than you if you're sterilized by defective products in the marketplace.

This bill is about limiting individual rights, particularly for middle income Americans. The rule is about limiting members amendments to expand rights. The bill cuts off the American people's rights to go to court, the rule the right to go to the House floor. Never before has the Contract With America been bolder in its statement that it is really a "Contract With Corporate America."

Mr. FROST. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Speaker, I rise in opposition to the rule.

Mr. Speaker, I am vehemently opposed to this closed rule on a piece of legislation that threatens to decimate the health and safety of innocent men, women, and children across the United States with its enaction. I urge my colleagues to join me in vociferously voting no.

Tuesday afternoon I testified before the Rules Committee on an amendment I submitted to the bill which would have required manufacturers to retain for 25 years documents that directly relate to the elements of a product liability action. With my amendment, materials concerning design specifications, warranties, warnings, and general product safety would have been preserved and available for use at trial by injured consumers bringing suit.

Unfortunately, and to this moment without presenting me or my staff with a reason, the committee did not rule my amendment in order. I strongly object to this attempt to muffle my ability to effectively represent my constituents. It is wrong and it is unwarranted, Mr. Speaker.

Today, many companies regularly feed documents into shredders, incinerators, et cetera under the guise of "document reduction" programs. In reality, however, they are effectively eliminating documents which could be crucial to the merits of a plaintiff's product liability claim. Such practices must be stopped and my amendment would have done just that.

This issue arises in a variety of contexts in product liability suits. The documents obtained during the discovery process help the plaintiff's lawyer to verify the statements of witnesses, refresh the memory of those who have forgotten key details of design and safety, and fill in the gaps from witnesses who have died, disappeared, or are beyond the court's jurisdiction. Where a lengthy statute of repose is involved, as the 15-year statute in H.R. 956, the manufacturer's documents are especially important due to the difficulty in remembering details from so many years before. Most significantly, on matters where the plaintiff carries the burden of proof they must have

access to the evidence necessary to present their case.

The importance of providing plaintiffs with access to a manufacturer-defendant's documents is illustrated in a fascinating book written about the Dalkon Shield tragedy. As the author describes:

Thousands of documents sought by lawyers for victims * * * sank from sight in suspicious circumstances. A few were hidden for a decade in a home basement in Tulsa, Oklahoma. Other records were destroyed in a city dump in Columbus, Indiana, and some allegedly in an A.H. Robins furnace.

This is not an isolated case Mr. Speaker. After an American Airlines DC–10 crashed in Chicago in 1979, one of the most serious aircraft crashes in history, the airline's lawyer instructed the author of an in-house report on the accident to destroy all notes, memoranda, and other data. Many believe that this material could have established the fact that the airline knew of a crack in the engine bulkhead before the accident occurred.

As I stated, to prohibit these practices, my amendment would have required manufacturers to retain for 25 years their documents and other data which directly relate to the elements of a product liability action.

Strong civil penalties would have been imposed by my amendment in instances where evidence was destroyed or concealed. If a court found that a litigant willfully destroyed or altered any key evidence, it could have concluded that the facts at issue did, in fact, exist as contended by the opposing party. Monetary penalties would also have been assessed, as they are a tried and true method for encouraging compliance with the law. A rebuttable presumption would have applied where the documents were nonwillfully eliminated in some other way.

My amendment is necessary for a number of reasons. First and foremost, it would ease backlogs in our court system and shorten the time it takes for cases to be resolved—a primary goal of H.R. 956, or so I thought. Where documents are destroyed or made unavailable, the result is more searching and time consuming discovery because secondary and more attenuated sources of evidence must be used.

In the process, attorney's fees are needlessly increased, limiting the number of claimants who can afford to bring their cases to court. Also, there is a higher likelihood of error by the factfinder by using secondary sources of evidence instead of the essential documents themselves. Thus my amendment would save not only the valuable time of the court and the litigants, but also increase access to our justice system for more citizens as well as promote fairer and more consistent verdicts.

Finally, my record retention amendment would encourage parties to come forward promptly with requested documents to avoid the monetary penalties and adverse presumptions of my proposal. In subsequent cases involving the same product, settlement prospects would be enhanced because manufacturers would not want these negative findings to apply again.

At the very least, my amendment would have encouraged manufacturers to rethink the wisdom of destroying, altering, or hiding vital documents. Under the best of circumstances, it would have forced companies to act in the most responsible manner and take safety precautions or correct defective products where records warn of such hazards. After all, I believe greater product safety remains the bottom line. Obviously the GOP does not.

Mr. Speaker, if anyone doubts the importance of record retention, they should consider two memorable cases. First, what recourse would asbestos victims have had if someone did not locate the Johns-Manville memo showing that the company knew of the health hazards of its product as early as 1930? Second, what compensation would have been awarded to the Grimshaw family if the cost-benefit analysis done by Ford in its Pinto accident cases had not "come to light?" The answer in both cases is little, if anything, and the victims would have been denied true justice.

I am sorry the majority on the Rules Committee don't care much for justice of any kind.

Again, I urge my colleagues to vote no on this ludicrous rule.

Mr. FROST. Mr. Speaker, for the purposes of debate only, I yield 3 minutes to the gentleman from New York [Mr. NADLER].

Mr. NADLER. Mr. Speaker, I rise to deliver a eulogy for a major pillar of the Republican Contract on America. This rule buries perhaps the only part of the contract that justifiably earned the support of most Members on both sides of the aisle.

The Republican majority has entertained us over the past few weeks with moving lectures on the importance of States rights and local autonomy. They have further declared what they describe as a new openness, which supposedly allows unprecedented freedom of debate on important issues on the floor of this, the People's House. How hypocritical and really tragic, then, that on this legislation that obliterates the rights of consumers to be protected against dangerous products and against those cynical corporations that calculate that there is more money to be made by selling exploding cars or medications with life-threatening side effects than by cleaning up their act. The closed rule would severely censure the debate.

I and others, for example, have proposed amendments that would preserve the States' authority over tort law. These amendments were not made in order. Is this the fine print in the contract? Are we to be forced to listen to pious homilies about local control, about an end to the Washington-knows-best attitude, but when it comes to something as important as the rights of consumers who have been injured or killed, local authorities no longer are on the list of the Speaker's approved political vocabulary and it is not even considered important enough to allow it to be debated on the floor of the House?

The State's authority over tort law, over medical malpractice and product liability, is to be consigned to history without even a moment's debate on the floor? What a mockery. What hypocrisy. The Republican leadership is afraid of an open debate on the arrogation to the Federal Government of the entire field of tort law.

For 200 years, Mr. Speaker, tort law and consumer protection have been entrusted to the States. Today an arrogant national government coldly steals that power without a moment's discussion on the floor of this House.

Mr. Speaker, I hope the American people are watching today's vote. I hope they keep track of who supports this political power grab. I hope the American people will remember this vote the next time someone who voted for this closed rule delivers a pious but empty and hypocritical sermon about States rights or about open government.

Mr. Speaker, I urge defeat of this terribly shameful closed rule.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. SOLOMON], the chairman of the committee.

Mr. SOLOMON. Mr. Speaker, I do not know who the previous speaker was talking about as being hypocritical, but we ought to be a little careful about how we describe other Members.

Let me just say that 72 percent of the American people favor legislation that places tighter limits and restrictions on an individual's ability to sue another person or company; 84 percent favor requiring defendants to pay damage awards according to their percentage of fault, and 78 percent favor limiting the amount awarded in punitive damages to no more than three times the amount of economic damages.

Mr. Speaker, the thing that gets me is that lawyers, with all due respect to them, take 50 to 70 percent of every dollar spent on product liability litigation, driving up the cost of everything. Since 1977 the revenue of the lawsuit abuse industry has compounded at 12 percent per year. That is faster even than the health care industry. And Americans pay $130 billion a year in litigation and higher insurance premiums as a result of product liability and personal injury cases.

Mr. Speaker, our legal system needs reform. It has been reported that Americans file lawsuits every 14 seconds in this country. This litigation explosion has been most evident in the areas of product liability lawsuits. That is what this legislation deals with here today. That is why we need to pass this rule without question and get on with this debate. This Congress has been gagged for 20 years from debating this issue on the floor of this Congress.

Finally, the American people are going to be heard. We are going to debate this issue in a few minutes, and we are going to pass it and send it to the Senate and on to the President.

And that President had better sign this bill because the American people want it.

Mr. FROST. Mr. Speaker, let me inquire as to the time remaining.

The SPEAKER pro tempore (Mr. EWING). The gentleman from Texas [Mr. FROST] has 1½ minutes remaining, and the gentleman from Georgia [Mr. LINDER] has 8½ minutes remaining.

Mr. LINDER. Mr. Speaker, I do not have any other speakers at this time, and I will reserve the right to close the debate.

The SPEAKER pro tempore. The gentleman from Georgia [Mr. LINDER] reserves the balance of his time.

Mr. FROST. Mr. Speaker, I want to serve notice that I intend to ask for a rollcall vote on the previous question, as well as on the passage of the rule, if the previous question is agreed to.

Mr. Speaker, for the purposes of debate only, I yield the remaining time on our side to the gentleman from Rhode Island [Mr. REED].

The SPEAKER pro tempore. The gentleman from Rhode Island [Mr. REED] is recognized for 1½ minutes.

(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, I rise in opposition to this rule.

This is an outrageous rule, and my opposition is not based on any underlying opposition to the bill as it came from the Committee on the Judiciary. I was one of two Democrats who supported this bill as it came to the Committee on the Judiciary. But what has taken place with this rule is that the Committee on Rules has cut off consideration of important amendments.

For example, the gentleman from California [Mr. BERMAN] has an amendment that would clarify the issue of de minimis tort feasors. This amendment received bipartisan support in the Judiciary Committee. It was not made in order.

The gentleman from Florida [Mr. MCCOLLUM] has an amendment to raise the punitive damage ceiling to $1 million. Once again this amendment received bipartisan support in the committee and is not being allowed to be considered on this floor today. That is outrageous. I think the reason is because these amendments do have bipartisan support. They would have likely engaged not only a full debate but they may well have passed and may well have improved this legislation. And clearly, that seems to be the last thing the majority wants to do at this moment, make better legislation or conduct a fair and open debate on these issues.

In addition to these points, they have made matters worse by approving a whole list of amendments which, if they pass, have the potential of making this bill a special interest Christmas tree, not tort reform but a special interest Christmas tree.

Furthermore, they have compounded that by in fact, through the rule, changing amendments that they were adopting in the Rules Committee, and this is a travesty.

Mr. Speaker, we should reject this rule and get on to real tort reform, not rhetoric on the floor.

Mr. LINDER. Mr. Speaker, I yield myself the balance of my time to close the debate.

First, Mr. Speaker, let me address the question of closed rules that keeps coming up from the Democrat side. Not to sound too remedial, but the gentleman from Texas [Mr. FROST] made it clear that the only reference in the contract was to full and open debate, not open rules. The only open rule promised in the contract was on the term limits bill, and it will be open.

The ceilings of $250,000 for punitive damages will tend to be floors in the long run. But that is not the way most of these cases are settled.

The bill also provides for three times economic losses. Judge Griffin Bell, the former Attorney General, was in my office 1 week ago and said that a case he represented, the famous case of a $100 million settlement from General Motors, with this bill, would have been a $6 million settlement, which is about what the family is going to get anyway.

To address a final point about States rights, the gentleman from New York made the case that we are taking away from the States. However, his mayor in a letter to the editor of the New York Times, after pointing out that a jury awarded $18 million to an 18-year-old student who decided to see if he could leap over a volleyball net in gym class and wound up a quadriplegic, awarded $4.3 million to a convicted felon who was caught mugging a 71-year-old. As the thief fled, a transit policeman shot him, leaving him paralyzed. The mugger sued and won.

A jury awarded $1 million to the estate of a drunken woman who had entered a closed city park illegally and drowned in three feet of water.

Then $676,000 went to the estate of a motorist killed after a drunk drove onto an expressway the wrong way and crashed into the motorist's car.

Then the mayor's office in a letter to the editor said this: "Congress is reviving the principles of single 'federalism' and returning power to the States, cities and other local governments. Toward that end, it should enact this simple measure to give cities like New York more control over their own fate."

The law department of the city of New York wrote in a memorandum in support of the Common Sense Legal Standards Reform Act: "I write to ask you to support" these amendments.

The city of New York has experienced an exponential growth in tort settlements and judgments. In 1984, New York City paid out $83 million in tort cases; this past fiscal year we paid plaintiffs and their lawyers an astounding $262 million. A substantial portion of that amount went for the all too familiar amorphous awards known as 'pain and suffering' damages. Our civil justice system is clearly in need of an overhaul.

Mr. Speaker, I urge my colleagues to support this rule and the amendment thereto.

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

Mr. LINDER. I am happy to yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Speaker, if I understand it, under the rule you are urging us to adopt, you have put out of order any amendments that would remove control of the States from this and focused it only on the Federal courts, so that the mayor of New York will have to turn to Washington rather than Albany, and the people of my State, instead of going to the State capital, will return to Washington for their product standards? In essence, you rip the tenth amendment apart?

Mr. LINDER. Mr. Speaker, the gentleman may have that opinion if he would like. I am just reading what the city of New York and its mayor said about it. The gentleman can take up his argument with him.

Mr. DOGGETT. Gladly.

Mr. LINDER. Mr. Speaker, I move the previous question on the resolution and the amendment thereto.

The SPEAKER pro tempore. The question is on ordering the previous question on the amendment and on the resolution.

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

Mr. FROST. 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.

Pursuant to the provisions of clause 5 of rule XV, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the question of agreeing to the amendment and on the question of the adoption of the resolution.

This is a 15-minute vote on the previous question.

The vote was taken by electronic device, and there were—yeas 234, nays 191, not voting 9, as follows:

[Roll No. 217]

YEAS—234

Allard	Barrett (NE)	Bliley
Archer	Bartlett	Blute
Bachus	Barton	Boehlert
Baesler	Bass	Boehner
Baker (CA)	Bateman	Bonilla
Baker (LA)	Bereuter	Bono
Ballenger	Bilbray	Brewster
Barr	Bilirakis	Brownback

Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Peterson (MN)
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tate
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—191

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Cramer
de la Garza
DeFazio
DeLauro
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hamilton
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lincoln
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (FL)
Pickett
Pomeroy
Poshard
Rahall
Reed
Reynolds
Richardson
Rivers
Roemer
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Sisisky
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tanner
Tauzin
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Velázquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Wyden
Wynn
Yates

NOT VOTING—9

Armey
Dellums
Greenwood
Hostettler
Istook
LoBiondo
Moran
Rangel
Woolsey

□ 1202

Mr. BROWN of Ohio and Mr. WARD changed their vote from "yea" to "nay."

Messrs. BASS, DEAL, and TATE changed their vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. EWING). The question is on the amendment offered by the gentleman from Georgia [Mr. LINDER].

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the resolution, as amended.

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

RECORDED VOTE

Mr. MOAKLEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 247, noes 181, not voting 6, as follows:

[Roll No. 218]

AYES—247

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
Martini
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Riggs
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—181

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Durbin
Edwards

Engel	Levin	Rivers
Eshoo	Lewis (GA)	Roemer
Evans	Lincoln	Rose
Farr	Lipinski	Roybal-Allard
Fattah	Lofgren	Rush
Fazio	Lowey	Sabo
Fields (LA)	Luther	Sanders
Filner	Maloney	Sawyer
Flake	Manton	Schroeder
Foglietta	Markey	Schumer
Ford	Martinez	Scott
Frank (MA)	Mascara	Serrano
Frost	Matsui	Skaggs
Furse	McCarthy	Skelton
Gejdenson	McDermott	Slaughter
Gephardt	McHale	Spratt
Gibbons	McKinney	Stark
Gonzalez	McNulty	Stokes
Gordon	Meehan	Studds
Graham	Meek	Stupak
Green	Menendez	Taylor (MS)
Gutierrez	Miller (CA)	Tejeda
Hall (OH)	Mineta	Thompson
Hamilton	Minge	Thornton
Harman	Mink	Thurman
Hastings (FL)	Moakley	Torres
Hefner	Mollohan	Torricelli
Hilliard	Murtha	Towns
Hinchey	Nadler	Traficant
Holden	Neal	Tucker
Hoyer	Oberstar	Velázquez
Jackson-Lee	Obey	Vento
Jacobs	Olver	Visclosky
Jefferson	Ortiz	Volkmer
Johnson (SD)	Orton	Ward
Johnson, E.B.	Owens	Waters
Johnston	Pallone	Watt (NC)
Kanjorski	Pastor	Waxman
Kaptur	Payne (NJ)	Williams
Kennedy (MA)	Pelosi	Wilson
Kennedy (RI)	Peterson (FL)	Wise
Kennelly	Pomeroy	Woolsey
Kildee	Poshard	Wyden
Kleczka	Rahall	Wynn
Klink	Reed	Yates
LaFalce	Reynolds	
Lantos	Richardson	

NOT VOTING—6

Clay	LoBiondo	Moran
Istook	Mfume	Rangel

□ 1212

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LINDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

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

There was no objection.

ANNOUNCEMENT BY CHAIRMAN OF COMMITTEE ON RULES REGARDING CONSIDERATION OF AMENDMENTS TO H.R. 1158, MAKING EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS, AND TO H.R. 1159, MAKING SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS

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

Mr. SOLOMON. Mr. Speaker, the Rules Committee is planning to meet on next Tuesday, March 14, to grant a rule which may limit the kind of amendments which may be offered to H.R. 1158, making emergency supplemental appropriations and rescissions and to H.R. 1159, making supplemental appropriations and rescissions.

The rule will, subject to the approval of the Rules Committee, include a provision requiring that amendments not increase the net level of budget authority in the bill. This means that if there is a proposal to add budget authority, it must be offset by other cuts in budget authority. And rescissions would be treated in a similar manner. If an amendment proposes to eliminate a rescission, it would need to include offsetting cuts.

The rule may further provide that the bill will be read for amendment by chapter, which means that any addition to a particular chapter of the bill would have to be offset by increasing rescissions in the same chapter.

New rescissions affecting programs other than those in the bill would constitute legislation on an appropriation and violate the standing rules of the House.

Subject to the approval of the Rules Committee this rule will include a provision requiring amendments to be preprinted in the amendment section of the CONGRESSIONAL RECORD. Amendments should be submitted for printing no later than Monday, March 13, 1995.

Amendments to be preprinted should be signed by the Member, and submitted at the Speaker's table.

The bill may be considered for amendment under the 5-minute rule, with a possible overall time limitation on the amending process.

Members should use the Office of Legislative Counsel to ensure that their amendments are properly drafted and should check with the Office of the Parliamentarian to be certain their amendments comply with the rules of the House. It is not necessary to submit amendments to the Rules Committee or to testify.

□ 1215

That is certainly optional.

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

Mr. SOLOMON. I yield to the gentleman from Massachusetts.

Mr. MOAKLEY. According to our latest information, the House is not in session Monday; is that so?

Mr. SOLOMON. In order to give Members a fair opportunity to prefile their amendments on this very important issue dealing with rescissions, the House is going to be in session pro forma on Monday, which means Members would have that opportunity to prefile their amendments so that they would appear in Tuesday's RECORD. That is very important.

Mr. MOAKLEY. Does the gentleman mean Members are going to come in here to sit for 5 minutes in order that they can file an amendment?

Mr. SOLOMON. No, I think that Members can submit their amendments, they can prefile them like we always do on Monday. You sign your name to it, your staff then drops them in the hopper for you.

Mr. MOAKLEY. How long will we be in session in the pro forma session?

Mr. SOLOMON. That depends.

Mr. MOAKLEY. It does not depend on us, how long we would be in session.

Mr. SOLOMON. It depends on how many 1-minutes there might be and how many special orders.

Mr. MOAKLEY. With no votes, the gentleman from New York [Mr. SOLOMON] is going to tell me we are going to go through an extensive pro forma session?

Mr. SOLOMON. Under unanimous-consent requests, filing of amendments would be in order up until 5 p.m. and that is the normal procedure of the House. We would have no objection to that.

Mr. MOAKLEY. Yes, but that request has not been made.

Mr. SOLOMON. No, we intend to make it.

Mr. MOAKLEY. When?

Mr. SOLOMON. So Members could be assured that they would have until 5 p.m. to file their amendments Monday. Again, this is in lieu of making them file their amendments by Friday at 5. This gives Members and their staffs the entire weekend and all day Monday.

Mr. MOAKLEY. So it is giving us our day off to come back here and file amendments. Is that what the gentleman is giving us?

Mr. SOLOMON. If the gentleman will let me interrupt him, I will make the unanimous-consent request right now.

PERMISSION FOR MEMBERS TO PREFILE AMENDMENTS ON H.R. 1158, EMERGENCY SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS AND H.R. 1159, SUPPLEMENTAL APPROPRIATIONS AND RESCISSIONS

Mr. SOLOMON. Mr. Speaker, I ask unanimous consent that Members would have until 5 p.m. on Monday to prefile their amendments on the rescission bills.

The SPEAKER pro tempore (Mr. EWING). Is there objection to the request of the gentleman from New York?

Mr. MOAKLEY. Mr. Speaker, reserving the right to object, would the gentleman be kind enough to withhold that request until we clear it with our leadership on this side, because I am sure this comes as quite a surprise.

Mr. SOLOMON. If the gentleman will yield, the gentleman is one of my best friends, and I would be glad to withdraw it at his request.

Mr. MOAKLEY. I thank the gentleman.

Mr. DINGELL. Mr. Speaker, I would also like to reserve the right to object.

Mr. SOLOMON. I have withdrawn the request, Mr. Speaker.

The SPEAKER pro tempore. The gentleman has withdrawn his request.

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

Mr. SOLOMON. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, let me ask the gentleman two questions that relate to the original announcement made by the gentleman from New York [Mr. SOLOMON], the committee chairman.

First of all, the gentleman mentioned legislating on an appropriation bill. Am I correct that the intent of the Committee on Rules will be to protect that legislation that is on the bill as it was reported by the committee?

Mr. SOLOMON. Absolutely. We intend to abide by the rules of the House.

Mr. HOYER. So you will be protecting——

Mr. SOLOMON. All we are saying is that if Members have amendments that would reinstate any of the cuts appearing in the bill that they would have to have offsetting cuts by chapter. In other words, in the Department of Veterans Affairs, HUD and Independent Agencies chapter, if you were going to reinstate a cut in that chapter, then you would have to provide for offsetting cuts within that chapter. But you are still allowed to offer further cuts on any of the chapters if you see fit, without offsetting anything.

Mr. HOYER. I understand. So if you wanted to make a cut in the defense chapter, there is no defense chapter, but if there were, you would have to make the cut in defense?

Mr. SOLOMON. Absolutely.

Mr. HOYER. That was, however, not the same when we added to the defense and made rescissions in the domestic side of the ledger some weeks ago. So we are changing that; is that correct?

Mr. SOLOMON. As we are doing it by chapter, right, because of the complexity of this legislation.

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

Mr. SOLOMON. I yield to the gentleman from Michigan.

Mr. DINGELL. What I am trying to do is to find out from my good friend the gentleman from New York, when will the basic legislation be available to us and when will the requirement for publication take place so we understand how much time we are going to have between the time the legislation becomes available and the time that the amendments——

Mr. SOLOMON. It is in today's RECORD. The gentleman has access to it. It was filed last night.

Mr. DINGELL. It was filed last night?

Mr. SOLOMON. Yes.

Mr. DINGELL. If the gentleman would yield further, could the gentleman tell me whether there will be changes in the legislation between now and the time that the printing requirement bites, so that we can understand that our amendments if drafted will be drafted to the legislation that will be considered by the House?

Mr. SOLOMON. To my knowledge, there will be no changes made. The report has been filed and the legislation is before you. It is pretty cut and dried.

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

The SPEAKER pro tempore. The time of the gentleman from New York [Mr. SOLOMON] has expired.

Mr. SOLOMON. I am waiting for the gentleman from Massachusetts up in the Committee on Rules. We are holding up all these people.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. MOAKLEY. Mr. Speaker, I ask unanimous consent to address the outstanding chairman of the Committee on Rules.

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

There was no objection.

Mr. MOAKLEY. The gentleman from New York [Mr. SOLOMON] says this is all cut and dried. So is there any reason for any amendments to be offered by Democrats? Are we going to be given any choice when you are picking out the Democratic amendments?

Mr. SOLOMON. There is a prefiling requirement. We intend to place a time limitation, but we would hopefully be able to take care of anyone's amendments, Democrat or Republican, liberal or conservative. We want to be as fair as we possibly can.

Mr. MOAKLEY. Mr. Speaker, I want to yield to our mutual friend, the chairman of the Committee on Veterans' Affairs, the Honorable General MONTGOMERY.

Mr. SOLOMON. He is not the chairman. He is the former good chairman, though.

Mr. MOAKLEY. He is always chairman to me.

Mr. MONTGOMERY. Mr. Speaker, if the gentleman will yield, I have been talking to him about the rescission of $206 million on veterans programs, mainly outpatient clinics which have been very, very important to take care of the older vet now that we have got about 20 million that are over age 60.

I have talked to the gentleman before. How does this affect the veterans?

Mr. SOLOMON. This means if you want to offer an amendment reinstating the cuts that appear in that chapter of the rescission bill—and I would support such an amendment, and I will take the floor and fight for it with you—it means that you are going to have to offset that reinstatement with a like amount of dollar cuts from other items appearing in that same chapter. Again that chapter takes in the Department of Veterans Affairs, it takes in HUD and independent agencies.

Just, for example, if you want to reinstate the veterans' cuts—and I do want to reinstate them, too—you are going to have to take them out of something like the National Service Corps, Americorps. In other words, we are going to have to decide which is the priority, and I will support the gentleman no matter where he takes it out of, out of that chapter.

Mr. MONTGOMERY. Will the gentleman support me if we do not take it away from anybody and just offer a clean amendment?

Mr. SOLOMON. No, I would not support that, because we have a responsibility to maintain the defense budget. With all the money that has been taken out of the defense budget for all of the peacekeeping missions, that is wrong. We have got to reinstate it someplace, and I will support your amendment if you offer it and will take the cuts out of somewhere else in the chapter.

The SPEAKER pro tempore. All time has expired.

(By unanimous consent, Mr. MOAKLEY was allowed to proceed for 1 additional minute.)

Mr. MOAKLEY. I yield to the gentleman from Mississippi.

Mr. MONTGOMERY. To the chairman of the Committee on Rules, one more question.

Mr. SOLOMON. One more time.

Mr. MONTGOMERY. In that chapter, the only thing the veterans have would be compensation and pensions, and I certainly would not want to cut compensation and pension programs.

Mr. SOLOMON. No.

Mr. MONTGOMERY. In that chapter, what else does it include that we could get the money from? And would you let me offer a clean amendment just to take care of the $206 million?

Mr. SOLOMON. SONNY, as a matter of fact, here is a list I will be glad to give to you. There are a lot of items in that chapter. Certainly I would not want to see you take it out of other veterans' benefits, but if you want to take it out of the National Service Corps, I will support your amendment. If you do not want to do that, I will do it.

Mr. MOAKLEY. Is the gentleman from New York [Mr. SOLOMON] going to allow the amendments that have been subject to the Appropriations Committee's——

The SPEAKER pro tempore. All time has expired.

Mr. MOAKLEY. May the gentleman from New York [Mr. SOLOMON] have enough time just to answer the question Mr. Speaker?

Mr. SOLOMON. That is up to the Committee on Rules, JOE, and you are the ranking member.

Mr. MOAKLEY. You are the Committee on Rules. I am asking.

COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 109 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 956.

□ 1225

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 further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

THe CHAIRMAN. When the Committee of the Whole rose on Wednesday, March 8, 1995, all time for general debate pursuant to House Resolution 108 had expired.

Pursuant to House Resolution 109, no further general debate is in order.

The amendment in the nature of a substitute consisting of the text of H.R. 1075 is considered as an original bill for purposes of amendment and is considered as having been read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 1075

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Common Sense Product Liability and Legal Reform Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Findings and purposes.
Sec. 102. Applicability and preemption.
Sec. 103. Liability rules applicable to product sellers.
Sec. 104. Defense based on claimant's use of intoxicating alcohol or drugs.
Sec. 105. Misuse or alteration.
Sec. 106. Frivolous pleadings.
Sec. 107. Several liability for noneconomic loss.
Sec. 108. Statute of repose.
Sec. 109. Service of process.
Sec. 110. Definitions.

TITLE II—PUNITIVE DAMAGES REFORM

Sec. 201. Punitive damages.
Sec. 202. Definitions.

TITLE III—BIOMATERIALS SUPPLIERS

Sec. 301. Liability of biomaterials suppliers.
Sec. 302. Procedures for dismissal of civil actions against biomaterials suppliers.
Sec. 303. Definitions.

TITLE IV—EFFECT ON OTHER LAW; EFFECTIVE DATE

Sec. 401. Effect on other law.
Sec. 402. Federal cause of action precluded.
Sec. 403. Effective date.

TITLE I—PRODUCT LIABILITY REFORM

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the manufacture and distribution of goods in interstate commerce is to a large extent a national activity which affects national interests in a variety of important ways;

(2) in recent years, the free flow of products in interstate commerce has been increasingly burdened by product liability law;

(3) as a result of this burden, consumers have been adversely affected through the withdrawal of products and producers from the national market, and from excessive liability costs passed on to them through higher prices;

(4) the rules of product liability law in recent years have evolved rapidly and inconsistently within and among the several States, such that the body of product liability law prevailing in this nation today is complex, contradictory, and uncertain;

(5) the unpredictability of product liability awards and doctrines are inequitable to both plaintiffs and defendants and have added considerably to the high cost of liability insurance, making it difficult for producers and insurers to protect their liability with any degree of confidence;

(6) product liability actions and punitive damage awards jeopardize the financial well-being of many industries and are a particular threat to the viability of the nation's small businesses;

(7) the extraordinary costs of the product liability system undermine the ability of American industry to compete internationally, and is costing the loss of jobs and productive capital; and

(8) because of the national scope of the manufacture and distribution of most products, it is not possible for the individual states to enact laws that fully and effectively respond to these problems.

(b) PURPOSES.—Based upon the powers contained in Article I, clause 3 of the United States Constitution, the purposes of this title are to promote the free flow of goods in interstate commerce—

(1) by establishing certain uniform legal principles which provide a fair balance between the interests of product users, manufacturers, and product sellers,

(2) by placing reasonable limits on product liability law,

(3) by ensuring that product liability law operates to compensate persons injured by the wrongdoing of others,

(4) by reducing the unacceptable transactions costs and delays which harm both plaintiffs and defendants,

(5) by allocating responsibility for harm to those in the best position to prevent such harm, and

(6) by establishing greater predictability in product liability actions.

SEC. 102. APPLICABILITY AND PREEMPTION.

(a) PREEMPTION.—This title governs any product liability action brought in any State or Federal court, on any theory for harm caused by a product. A civil action brought for commercial loss shall be governed only by applicable commercial or contract law.

(b) RELATIONSHIP TO STATE LAW.—This title supersedes State law only to the extent that State law applies to an issue covered by this title. Any issue that is not governed by this title shall be governed by otherwise applicable State or Federal law.

SEC. 103. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—Except as provided in subsection (b), in any product liability action, a product seller other than a manufacturer shall be liable to a claimant for harm only if the claimant establishes that—

(1)(A) the product which allegedly caused the harm complained of was sold by the product seller; (B) the product seller failed to exercise reasonable care with respect to the product; and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty applicable to the product which allegedly caused the harm complained of, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the warranty; and (C) the failure of the product to conform to the warranty caused the claimant's harm; or

(3) the product seller engaged in intentional wrongdoing as determined under applicable State law and such intentional wrongdoing was a proximate cause of the harm complained of by the claimant.

For purposes of paragraph (1)(B), a product seller shall not be considered to have failed to exercise reasonable care with respect to the product based upon an alleged failure to inspect a product where there was no reasonable opportunity to inspect the product in a manner which would, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(b) EXCEPTION.—In a product liability action, a product seller shall be liable for harm to the claimant caused by such product as if the product seller were the manufacturer of such product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

SEC. 104. DEFENSE BASED ON CLAIMANT'S USE OF INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—In any product liability action, it shall be a complete defense to such action if—

(1) the claimant was intoxicated or was under the influence of intoxicating alcohol or any drug when the accident or other event which resulted in such claimant's harm occurred; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for such accident or other event.

(b) CONSTRUCTION.—For purposes of subsection (a)—

(1) the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law; and

(2) the term "drug" means any controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802(6)) that has been taken by the claimant other than in accordance with the terms of a lawfully issued prescription.

SEC. 105. MISUSE OR ALTERATION.

(a) GENERAL RULE.—Except as provided in subsection (c), in a product liability action, the damages for which a defendant is otherwise liable under State law shall be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of a product by any person if the defendant establishes by a preponderance of the evidence that such percentage of the claimant's harm was proximately caused by—

(1) a use or alteration of a product in violation of, or contrary to, the defendant's express warnings or instructions if the

warnings or instructions are adequate as determined pursuant to applicable State law, or

(2) a use or alteration of a product involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(b) WORKPLACE INJURY.—Notwithstanding subsection (a), the damage for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries.

SEC. 106. FRIVOLOUS PLEADINGS.

(a) GENERAL RULE.—

(1) SIGNING OF PLEADING.—The signing or verification of a pleading in a product liability action in a State court subject to this title constitutes a certificate that to the signatory's or verifier's best knowledge, information, and belief, formed after reasonable inquiry, the pleading is not frivolous as determined under paragraph (2).

(2) DEFINITIONS.—

(A) For purposes of this section, a pleading is frivolous if the pleading is—

(i) groundless and brought in bad faith;

(ii) groundless and brought for the purpose of harassment; or

(iii) groundless and interposed for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of litigation.

(B) For purposes of subparagraph (A), the term "groundless" means—

(i) no basis in fact; or

(ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) DETERMINATION THAT PLEADING FRIVOLOUS.—

(1) MOTION FOR DETERMINATION.—Not later than 60 days after the date a pleading in a product liability action in a State court is filed, a party to the action may make a motion that the court determine if the pleading is frivolous.

(2) COURT ACTION.—The court in a product liability action in a State court shall on the motion of a party or on its own motion determine if a pleading is frivolous.

(c) CONSIDERATIONS.—In making its determination of whether a pleading is frivolous, the court shall take into account—

(1) the multiplicity of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the party to investigate and conduct discovery; and

(4) affidavits, depositions, and any other relevant matter.

(d) SANCTION.—If the court determines that a pleading is frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the pleading. The sanction may include one or more of the following:

(1) the striking of a pleading or the offending portion thereof;

(2) the dismissal of a party; or

(3) an order to pay to a party who stands in opposition to the offending pleading the amounts of the reasonable expenses incurred because of the filing of the pleading, including costs, reasonable attorney's fees, witness fees, fees of experts, and deposition expenses.

(e) CONSTRUCTION.—For purposes of this section—

(1) a general denial does not constitute a frivolous pleading; and

(2) the amount requested for damages does not constitute a frivolous pleading.

SEC. 107. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

In any product liability action, the liability of each defendant for noneconomic loss shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic loss attributable to such defendant in direct proportion to such defendant's proportionate share of fault or responsibility for the claimant's harm, as determined by the trier of fact.

SEC. 108. STATUTE OF REPOSE.

(a) GENERAL RULE.—A product liability action shall be barred unless the complaint is served and filed within 15 years of the date of delivery of the product to its first purchaser or lessee, who was not engaged in the business of selling or leasing the product or of using the product as a component in the manufacture of another product. This subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses.

(b) EXCEPTION.—Subsection (a)—

(1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 15 years, but it will apply at the expiration of such warranty,

(2) does not apply to a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product, and

(3) does not affect the limitations period established by the General Aviation Revitalization Act of 1994.

SEC. 109. SERVICE OF PROCESS.

This title shall not apply to a product liability action unless the manufacturer of the product or component part has appointed an agent in the United States for service of process from anywhere in the United States.

SEC. 110. DEFINITIONS.

As used in this title:

(1) The term "claimant" means any person who brings a product liability action and any person on whose behalf such an action is brought. If such an action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) The term "commercial loss" means any loss of or damage to a product itself incurred in the course of the ongoing business enterprise consisting of providing goods or services for compensation.

(3) The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings, medical expense loss, replacement services loss, loss due to death, and burial costs) to the extent recovery for such loss is allowed under applicable State law.

(4) The term "harm" means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(5) The term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who (i) designs or formulates the product (or component part of the product), (ii) has engaged another person to design or formulate the product (or component part of the product), or (iii) uses the design or formulation of the product developed by another person;

(B) a product seller of the product who, before placing the product in the stream of commerce—

(i) designs or formulates or has engaged another person to design or formulate an aspect of the product after the product was initially made by another, or

(ii) produces, creates, makes, or constructs such aspect of the product, or

(C) any product seller not described in subparagraph (B) which holds itself out as a manufacturer to the user of the product.

(6) The term "noneconomic loss" means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation.

(7) The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(8)(A) The term "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state which—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) The term does not include—

(i) human tissue, human organs, human blood, and human blood products; or

(ii) electricity, water delivered by a utility, natural gas, or steam.

(9) The term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

(10) The term "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels a product, is otherwise involved in placing a product in the stream of commerce, or installs, repairs, or maintains the harm-causing aspect of a product. The term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; or

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor.

(11) The term "State" means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

TITLE II—PUNITIVE DAMAGES REFORM

SEC. 201. PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded in any civil action for harm in any Federal or State court against a defendant if the claimant establishes by

clear and convincing evidence that the harm suffered was result of conduct—

(1) specifically intended to cause harm, or

(2) conduct manifesting a conscious, flagrant indifference to the safety of others.

(b) PROPORTIONAL AWARDS.—The amount of punitive damages that may be awarded in any civil action subject to this title shall not exceed 3 times the amount of damages awarded to the claimant for the economic loss on which the claimant's action is based, or $250,000, whichever is greater.

(c) APPLICABILITY AND PREEMPTION.—Except as provided in section 401, this title shall apply to any civil action brought in any Federal or State court on any theory where punitive damages are sought. This title does not create a cause of action for punitive damages in any jurisdiction that does not authorize such actions.

(d) BIFURCATION.—At the request of any party, the trier of fact shall consider in a separate proceeding whether punitive damages are to be awarded and the amount of such award. If a separate proceeding is requested, evidence relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(e) CONSIDERATION.—In determining the amount of punitive damages, the trier of fact shall consider all relevant, admissible evidence, including—

(1) the severity of the harm caused by the conduct of the defendant,

(2) the duration of the conduct or any concealment of it by the defendant,

(3) the profitability of the specific conduct that caused the harm to the defendant,

(4) the number of products sold, the frequency of services provided, or the type of activities conducted by the defendant of the kind causing the harm complained of by the claimant,

(5) awards of punitive damages to persons similarly situated to the claimant,

(6) possibility of prospective awards of compensatory damages to persons similarly situated to the claimant,

(7) any criminal penalties imposed on the defendant as a result of the conduct complained of by the claimant,

(8) the amount of any civil and administrative fines and penalties assessed against the defendant as a result of the conduct complained of by the claimant, and

(9) whether the foregoing considerations have been a factor in any prior proceeding involving the defendant.

SEC. 202. DEFINITIONS.

As used in this title:

(1) The term "claimant" means any person who brings a civil action and any person on whose behalf such an action is brought. If such action is brought through or on behalf of an estate, the term includes the claimant's decedent. If such action is brought through or on behalf of a minor or incompetent, the term includes the claimant's legal guardian.

(2) The term "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt.

(3) The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings, medical expense loss, replacement services loss, loss due to death, and burial costs), to the extent recovery for such loss is allowed under applicable State law.

(4) The term "harm" means any legally cognizable wrong or injury for which punitive damages may be imposed.

(5) The term "punitive damages" means damages awarded against any person or entity to punish or deter such person or entity, or others, from engaging in similar behavior in the future.

(6) The term "State" means any State of the United States, the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, or any political subdivision of any of the foregoing.

TITLE III—BIOMATERIALS SUPPLIERS

SEC. 301. LIABILITY OF BIOMATERIALS SUPPLIERS.

A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by a medical device, only if the claimant in a product liability action shows that the conduct of the biomaterials supplier was an actual and proximate cause of the harm to the claimant and—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts:

(ii)(I) provided to the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary of Health and Human Services and that is currently maintained by the biomaterials supplier of purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for the purposes of premarket approval or review by the Secretary of Health and Human Services under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary of Health and Human Services, if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the raw materials or component parts;

(2) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(3) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

SEC. 302. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—

(1) GENERAL RULE.—Any biomaterials supplier who is a defendant in any product liability action involving a medical device which allegedly caused the harm for which the action is brought and who did not take part in the design, manufacture, or sale of such medical device may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(A) the claimant has failed to establish that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier; or

(B) the claimant has failed to comply with the requirements of subsection (b).

(2) EXCEPTION.—The biomaterials supplier may not move to dismiss the action if—

(A) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(B) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(b) MANUFACTURER OF MEDICAL DEVICE SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the medical device to which the biomaterials supplier furnished raw materials or component parts as a party to the product liability action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDINGS ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO STATUS OF DEFENDANT.—

(A) DEFENDANT AFFIDAVIT.—The defendant in the action may support a motion to dismiss by filing an affidavit demonstrating that defendant is a biomaterials supplier and that it is neither the manufacturer nor the product seller of the medical device which caused the harm alleged by the claimant.

(B) RESPONSE TO MOTION TO DISMISS.—In response to a motion to dismiss described in this section, the claimant may submit an affidavit demonstrating why it asserts that—

(i) the defendant who filed the motion to dismiss is not a biomaterials supplier with respect to the medical device which caused the harm alleged by the claimant;

(ii) on what basis it asserts that the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(iii) the biomaterials supplier intentionally and wrongfully withheld or misrepresented information that is material and relevant to the harm suffered by the claimant; or

(iv) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—If a defendant files a motion to dismiss, no discovery shall be permitted in connection with the action that is the subject of the motion, unless the affidavits submitted in accordance with this section raise material issues of fact concerning whether—

(A) the supplier furnished raw materials or component parts in violation of applicable contractual requirements or specifications agreed to by the biomaterials supplier;

(B) the biomaterials supplier intentionally and wrongfully withheld or misrepresented

information that is material and relevant to the harm suffered by the claimant; or

(C) the biomaterials supplier had actual knowledge of prospective fraudulent or malicious activities in the use of its supplies where such activities are relevant to the harm suffered by the claimant.

Any such discovery shall be limited solely to such material facts.

(3) RESPONSE TO MOTION TO DISMISS.—The court shall rule on the motion to dismiss solely on the basis of the affidavits filed under this section and on the basis of any evidence developed in the course of discovery under paragraph (2) and subsequently submitted to the court in accordance with applicable rules of evidence.

(d) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 303. DEFINITIONS.

For purposes of this title:

(1) The term "biomaterials supplier" means an entity that directly or indirectly supplies, or licenses another person to supply, a component part or raw material for use in the manufacture of a medical device—

(A) that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids of internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(2) Notwithstanding paragraph (1), the term "biomaterials supplier" excludes any person, with respect to a medical device which is the subject of a product liability action—

(A) who is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the medical device, and has registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section, and has included the medical device on a list of devices filed with the Secretary of Health and Human Services pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section; or

(B) who, in the course of a business conducted for that purpose, has sold, distributed, leased, packaged, labeled, or otherwise placed the implant in the stream of commerce after it was manufactured.

(3) The term "harm" means any physical injury, illness, disease, or death or damage to property caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(4) The term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

TITLE IV—EFFECT ON OTHER LAW; EFFECTIVE DATE

SEC. 401. EFFECT ON OTHER LAW.

Nothing in title I, II, or III shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum.

SEC. 402. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction pursuant to this Act based on section 1331 or 1337 of title 28, United States Code.

SEC. 403. EFFECTIVE DATE.

Titles I, II, and III shall apply with respect to actions which are commenced after the date of the enactment of this Act.

The CHAIRMAN. No amendment to the amendment in the nature of a substitute shall be in order except the amendments printed in House Report 104–72 or in section 2 of House Resolution 109, as amended. Each amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

Debate time on each amendment will be equally divided and controlled by the proponent and an opponent of the amendment.

It is now in order to consider amendment number 1 printed in section 2 of House Resolution 109, as amended.

AMENDMENT OFFERED BY MR. PETE GEREN OF TEXAS

Mr. PETE GEREN of Texas. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. PETE GEREN of Texas: Page 7, insert after line 3 the following:

(c) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product shall be subject to liability under subsection (a) but shall not liable to a claimant for the tortious act of another involving a product solely by reason of ownership of such product.

The CHAIRMAN. Pursuant to the rule, the gentleman from Texas, Mr. PETE GEREN and a Member opposed will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Texas, Mr. PETE GEREN.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment is in fact a clarifying amendment to title I of H.R. 1075. Our amendment would clarify that companies that rent or lease products are covered by the provisions of title I. Currently under title I it is clear that product liability actions against companies that sell products are subject to section 103. Section 103 provides that a product liability action cannot be pursued against a product seller unless the seller has been negligent, has offered an express warranted offer, or has engaged in intentional wrongdoing. Simply stated, there should be no liability without fault. That is the intention of this clarifying amendment.

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

Mr. PETE GEREN of Texas. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, this amendment amplifies and is consistent with an amendment offered in the committee by the gentleman from Illinois [Mr. FLANAGAN]. We find it perfectly acceptable, and I am pleased to accept the amendment.

Mr. PETE GEREN of Texas. Reclaiming my time, Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding me the time, and I rise in support of the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding me the time.

Mr. Chairman, I too rise in strong support of this amendment. Vicarious liability is plain and simple: liability without fault. Every month car dealers, rental companies and leasing firms are held liable under these vicarious liability laws for harm to third parties that they in no way could prevent. There is no negligence whatsoever, and I believe that this clarifying amendment is essential because of the cost to American consumers literally equaling tens of millions of dollars in higher prices for car rental leases and also we are paying a price in terms of competition in these industries.

This bill has the support of the auto manufacturers, the new and used car dealers and the car rental industry. If there is any opposition, it comes from those who have used the vicarious liability laws to coerce companies into unfair and inequitable settlements.

This reform is long overdue. I commend the gentleman from Texas for bringing this amendment to the floor. I urge my colleagues to support it.

The CHAIRMAN. The Chair would inquire if there is any Member who wishes to speak in opposition to the amendment.

Mrs. SCHROEDER. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 5 minutes.

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

Mr. Chairman, I do not rise in strong opposition to this but I must say I rise with great concern because there were so many amendments that were really very, very substantive and they were not allowed, and here we are with the first amendment, one that was basically adopted by the committee. I do not think there is a tremendous amount of dissent about it, and I think it just shows what a lot of us have been trying to say during the rules debate.

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Really critical issues about which there is a lot of debate and a lot of concern have been moved aside, and they made room instead for amendments like this which were really more like a love-in. Basically, this amendment too goes to the issue a little bit more of tort. I think it is a little bit more of concern to some that it is kind of squeezed into the product liability, and I have some question as to how it may have moved into the torts area, and it is not quite clear. But nevertheless, my position at this point, and the committee's position on this side of the aisle would be that it is a shame we could not have substituted some of the amendments that there was much more dissent about than spending precious time on the floor on this.

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

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 30 seconds to the gentleman from Florida [Mr. DEUTSCH].

Mr. DEUTSCH. Mr. Chairman, I rise in support of this amendment. This amendment clarifies what the committee tried to do in terms of making sure that a renter of a product is not automatically liable in that situation, and I urge the adoption of the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, I yield 30 seconds to the gentleman from Illinois [Mr. FLANAGAN].

Mr. FLANAGAN. Mr. Chairman, I also rise in support of this amendment.

During the Committee on the Judiciary markup of the product liability bill I offered an amendment which was adopted by voice vote to assure that companies who rent products were covered under the definition of product seller. This amendment is a further improvement on the Judiciary Committee bill, and it expressly states that a company that rents and leases products is to be treated as a product seller under title I of the bill. It makes clear that those companies will not be held liable for injuries they do not cause.

This amendment deserves the support of every Member of the body, and I urge my colleagues to support it overwhelmingly.

Mr. Chairman, among the problems H.R. 1075 is designed to address is the tort doctrine of vicarious liability for motor vehicles. The amendment, which I have coauthored with Messrs. Geren, Ramstad, and Cox, is a mere clarification of the bill's scope. It would assure that vicarious liability—or liability without fault—is covered under the product liability legislation before us today.

Mr. Chairman, 11 States and the District of Columbia currently have these vicarious liability laws on the books—laws which hold the owners of motor vehicles liable for damages caused by their vehicles even though the owners were not negligent and there is no defect in their automobiles.

Many businesses, such as car rental companies, automobile dealers, and leasing companies are being held strictly liable in these vicarious liability States for injuries they did not cause and could not prevent. These companies have not been negligent, and yet they are being forced to pay for the negligence of others.

For example, in my neighboring State of Iowa, a renter of an automobile fell asleep at the wheel. The vehicle he was driving left the road and struck a parked truck. Unfortunately, the renter's wife and child were killed in the accident. Although there was no negligence on behalf of the car rental company, the court still imposed a $800,000 judgement on the rental company. Mr. Chairman, is this fair?

To cite one more example, this time in New York, where a renter, allegedly using the vehicle for drug trafficking, struck a pedestrian on a downtown Manhattan street. The pedestrian received severe head injuries from the accident. The settlement by the car rental company was set at $1.226 million. Again, the car rental company had to pay-out $1,226,000 although it was not negligent. Surely, in this instance, the car rental company should not have been held at fault.

The Geren-Ramstad-Cox-Flanagan amendment will provide relief in these circumstances and would assure that companies that rent or lease products are not held liable for damages caused by rented or leased products if the company could not have prevented the harm.

This provision would not exempt these companies from liability if the company is negligent and would not exempt these companies from State financial responsibility laws for vehicle owners in each State.

In addition, this amendment would not, as has been alleged, cover all automobile accidents. Such a statement ignores the plain wording of the amendment. The amendment would cover only civil actions involving product sellers, not civil actions against all drivers of motor vehicles. Again, this amendment only covers product sellers as defined in section 110 of the bill.

Mr. Chairman, I believe it is appropriate to include the Geren-Ramstad-Cox-Flanagan provision in H.R. 1075 because vicarious liability impacts the car rental industry in the same fashion that product liability impacts other product sellers.

Vicarious liability claims cost car rental companies over $75 million annually—costs which drive up rental and leasing rates for all Americans.

In addition, vicarious liability has driven smaller companies out of business or forced them to refrain from doing business in States with vicarious liability laws. This leads to decreased competition, increased rates, and limited choice for consumers.

In sum, Mr. Chairman, section 103 of H.R. 1075 states that a product seller shall not be held liable without fault. This amendment simply extends this principle to companies that rent or lease products.

Therefore, Mr. Chairman, I urge my colleagues to support the amendment.

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

Mr. Chairman, I continue my protest that we had amendments that were very, very critical that were shut out. One of the ones that I had wanted to offer that had everybody from the Right to Life Committee to NARAL joining in consensus on was a very critical one.

It dealt with people's reproductive organs, and the fact that it should be removed from this bill because people feel very, very strongly, and especially women who have had incident after incident after incident of people manufacturing things that did affect their reproductive organs. We really felt we wanted to make it very clear we thought that that should not be covered by this bill. That was not allowed.

I find that pretty amazing when we have this consensus from right to left, and it is rather historic, I do not think we have had that kind of consensus in this body for a very long time, that that amendment was not allowed, and yet we have this as an amendment that was adopted by voice vote, as the gentleman from Illinois said, in the committee, and here we are just continuing to perfect it a little bit and taking up time.

There are many other amendments similar to mine in the 82 that were there, and of course many fell off the table. And then of course many of the ones that we had, such as the one I will have next, has been limited to 20 minutes. We got hardly any time to discuss very serious legal principles that have been established in this country since the beginning of the Republic that we are now changing today, and it seems to me that we should have taken the precious time that we have and allocated it to many more of the serious issues about which there is real contention than this, which is really more of a cosmetic, housekeeping amendment about which there really has not been a lot of disagreement.

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

Mr. PETE GEREN of Texas. Mr. Chairman, I yield myself such time as I may consume, and I yield to the gentleman from Louisiana [Mr. TAUZIN] for the purposes of a colloquy.

The CHAIRMAN. The gentleman from Texas, Mr. PETE GEREN, has 1½ minutes remaining.

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

Mr. PETE GEREN of Texas. I yield to the gentleman from Louisiana.

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding. It is my

understanding that this amendment is intended only to preempt the State laws in a small minority of jurisdictions that impose unlimited financial liability on owners of motor vehicles for harm caused by the permissive users of their vehicles, and that nothing in this amendment should be construed to excuse any motor vehicle owner from meeting the minimum financial responsibility laws required by each State.

Mr. PETE GEREN of Texas. The gentleman's understanding of this amendment is correct, and that is an accurate characterization of it. I appreciate the gentleman helping us to clarify the intent of this amendment.

Mr. TAUZIN. I thank the gentleman, and I urge support for the amendment.

Mr. PETE GEREN of Texas. Mr. Chairman, borrowing from the wisdom I picked up from the gentleman from Louisiana over my years here, and drawing on the comments of the gentlewoman from Colorado, when the package is sold, you wrap it up.

Mr. Chairman, I yield back the balance of my time.

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

Mr. Chairman, obviously I have a lot to say on my next amendment, and whatever time I have left, if I could just use it for that I would be very, very appreciative.

In my next amendment I am going to be talking about noneconomic damages, and it is called the family values amendment. I think even the gentleman from Texas would join me in saying that this body should stand up for this next family values amendment that hopefully will be coming up almost immediately after a voice vote on this, because it is a very serious amendment. We are talking about we cannot talk family values and say they do not amount to anything, and unless we pass this amendment that is exactly what we will be saying. So I apologize to the gentleman from Texas for using our 5 minutes to talk about some of the problems we have in trying to deal with this because of the rule, but I felt that that was really the only fair thing to do since we were not allowed to offer many of the amendments that really, really were coming up. So what I will be able to do then, hopefully, is find a way to get people's attention as to how patched together this is, how uncertain many of us are, and the concerns we have.

The CHAIRMAN. The time of the gentlewoman from Colorado [Mrs. SCHROEDER] has expired. All time has expired.

The question is on the amendment offered by the gentleman from Texas, Mr. PETE GEREN.

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in section 2 of House Resolution 109.

AMENDMENT OFFERED BY MRS. SCHROEDER

Mrs. SCHROEDER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mrs. SCHROEDER: Page 11, strike lines 17 through 24, and redesignate succeeding sections accordingly.

Page 17, line 25, insert "and noneconomic" before "loss".

The CHAIRMAN. Pursuant to the rule, the gentlewoman from Colorado [Mrs. SCHROEDER] and a Member opposed will each be recognized for 10 minutes.

The Chair recognizes the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, this amendment I have called the family values amendment, and I think it is very critical. I was very pleased when I offered it in the committee that it had a very large vote, and we had votes from both sides of the aisle.

Americans value their families. We talk family values. Here is a chance to put our money where our mouths are, because under this bill noneconomic damages are discriminated against very, very much, and I do not think that is fair.

Noneconomic damages mean if you do not get a paycheck, you do not count. So the fact that you were staying home and taking care of your family, no matter which parent you are, that does not matter. That is noneconomic damages. You do not count.

Let me tell my colleagues, every parent is a working parent, whether they are working in the house or out of the house, so I think that is ridiculous.

Second, if you are a child obviously you are not getting a paycheck, so that does not count.

Third, if a woman is working outside the home, they are still, unfortunately, very apt to be discriminated against, so any paycheck they would get still reflects the discrimination we have in society.

Finally, one of the areas I feel strongest about is the whole area of people's reproductive organs, because we have seen so many problems in this area in the past, with the Dalcon shield and all sorts of other issues that people are more and more familiar with. If we do not deal with this noneconomic damage issue in this bill, then we are really saying those do not matter. And we will not have joint and several liability on those issues, which means even if you get some kind of a judgment, it is very apt that you will not be able to collect it, you cannot collect it nearly as easy as you can with economic damages.

And this bill discriminates on punitive damages by not allowing noneconomic damages to count. So we are really saying you are only valued for your paycheck. There is no other value to you, and any other value that you have, whether it is about your reproductive organs or not, it does not count.

The CHAIRMAN. Does any Member seek recognition in opposition to the amendment?

Mr. HYDE. Mr. Chairman, indeed there is. I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 10 minutes.

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

Mr. Chairman, the amendment offered by the gentlewoman from Colorado eliminates the protection against disproportionate liability for subjective, nonmonetary losses and weakens the protection of the punitive damages cap. For these reasons I urge the defeat of the pending amendment. It was offered in committee and was defeated in committee.

Section 107, in the interests of fairness, protects a defendant from being held liable for noneconomic losses that are attributable to the fault or responsibility of another individual or entity. The concept of a defendant paying for its own proportionate share of fault or responsibility sounds self-evident to most people. Many States, however, give expression in their law to the principle of joint and several liability, which in its unrestricted form means that a party with relatively nominal responsibility, perhaps 1 percent, can be held liable for the fault attributable to the others, perhaps 99 percent.

The result of the principle of joint and several liability is that litigation imposes severe risks for solvent businesses, often necessitating excessive settlement offers, increasing liability insurance costs, and making goods more expensive for consumers. All of these factors have negative implications for our competitiveness in international markets and our ability to keep enterprises, with all of the jobs involved, in the United States.

Section 107 essentially is a compromise between the principle of joint and several liability with its disproportionate attendant costs, and the concept of liability limited to degree of fault or responsibility. Under section 107, a defendant can only be held liable for noneconomic losses in proportion to its share of the total fault or responsibility, but can continue to be held liable to the extent authorized by State law for economic losses that exceed its proportionate share.

This bill does not impinge on the rights of claimants to recover noneconomic damages from a defendant for the harm it inflicts, but appropriately safeguards one party from having to pay for the harm others inflict. Disproportionate liability for

noneconomic damages not only is unfair, but results in expenses that are passed on to all Americans.

I strongly recommend defeat of this amendment.

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

Mrs. SCHROEDER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I just wanted to quickly answer my chairman. If joint and several is so terrible, then joint and several liability should be removed for both compensatory and noneconomic damages, and it is not. They are keeping it for one and taking it away for another, which is saying that family values do not count.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, if I understand the focus of the gentlewoman's amendment, this bill as written discriminates against the young child who has a limb severed or is decapitated, really, as a result of playground equipment, a senior citizen who is burned horribly in a fire with a defective heater, a student who is exposed to toxic substances and is impaired for life, a homemaker, be that male or female, but usually it ends up being female, a woman who is at home providing for her family but not a wage earner at that time? All of these people are treated as second-class citizens under this piece of legislation unless the gentlewoman's amendment is adopted.

□ 1245

Mrs. SCHROEDER. The gentleman is absolutely correct. That is why we call it family values. I think we respect something besides just a paycheck.

The paycheck is raised to a much higher level in this bill. It is going to be much easier to collect if you can show a paycheck. If you cannot, then you do not get the options of joint and several liability, you do not get the punitive damages. You are in real trouble. Those are the people that we are saying that do not count. We say, "We like you, but good luck getting any damages on that."

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a valued member of the committee.

Mr. SENSENBRENNER. I thank the gentleman for yielding.

Mr. Chairman, this amendment is a killer amendment, and it is a killer amendment because it goes back from the principles stated in the bill that the party who is at fault pays and the party who is not at fault does not pay.

The bill provides for several liability for noneconomic losses. That means that if a person or a party is determined by the jury to be 1 percent at fault, that party will pay 1 percent of the noneconomic losses, not 100 percent, if the party who is found more negligent by the jury ends up not having any assets or not having any insurance to pay for the judgment.

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. SENSENBRENNER. I have a limited amount of time. I think it is only fair, the gentlewoman from Colorado, that the opponents use their time to lay out the case and not horn in on the opponents' time and take all of the time in support of it.

Second, what the gentlewoman from Colorado's amendment also proposes to do is to limit the cap on punitive damages. Punitive damages are not compensation for anything. It is designed to be punishment for the party or the parties that are at fault. And the bill provides an elastic ceiling on punitive damages of $250,000, or three times the actual damages, whichever is greater. So if there is more than $83,000 or $84,000 of actual damages, then the punitive damages cap goes up.

Punitive damages are not compensation for anything, whether it is an economic loss or a noneconomic loss.

So the gentlewoman is now trying to increase punitive damages awards, which will end up, of course, enriching not only a plaintiff for not what they actually lost but also manufacture's attorney.

I would hope, for these two reasons, that this killer amendment would be defeated.

Mrs. SCHROEDER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. I thank the gentlewoman for yielding this time to me.

Mr. SENSENBRENNER, as we all know, the purpose of punitive damages is to deter manufacturers of dangerous products from being willing to put the dangerous products on the market because they might hurt somebody.

As we all know, because we are all human beings, some companies have done this, there will always be someone willing to do that, and we want them to be afraid to do it because if they do do it, they could get socked with punitive damages. That is the purpose of punitive damages.

You are taking these out of the bill. Basically, you are saying the cap on punitive damages is $250,000, which is not enough to frighten any major company, or three times earnings.

Once again, this is a bill basically for rich folks and it is a bill that is going to hurt poor folks, poor working people. Why? Because under the Republican bill, you could get three times your economic damages for punitive damages. So, for a wealthy fellow who is making a lot of money, it is going to be three times a whole lot of money. But for a working person who is not making very much money, it is going to be three times not much, even though they both lost the same thing—that is, their ability to live a normal life and to make a living for their families.

So the rich are going to get plenty of money under your bill, the poor folks are not going to get much at all.

Or the regular folks, the working folks, the retired folks, or women who work in the home, for example, who cannot show great economic loss because they cannot work anymore, they are going to get very little. Your friends are going to get a whole lot. Why? Because your friends make a lot of money.

That is the bill you brought out to the House here today.

In 1966, 24 American young men were killed playing football. In 1990, none were killed playing football. Sports Illustrated reported that that is because of the fear of the manufacturers of football equipment that if they did not make the stuff safer, they would get sued and get a punitive damage award.

You are taking the punitive damage awards out of this bill, for all practicable purposes. You are saying the cap is $250,000, or three times economic damages, and you know that for 99 percent of the American people economic damages will not amount to very much. Well, they certainly will not amount to enough to deter one of these big companies from putting a bad product on the market.

I urge a vote for the amendment of the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. HYDE. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. I thank the chairman for yielding this time to me.

Mr. Chairman, let me say first of all that I hope we could have avoided some of the class war rhetoric that we have heard in debating this legislation. The fact is that in many cases in Europe, for example, where they probably have the safest automobiles in the world, there is no provision for punitive damages over there. The fact is that the American automobile manufacturers could not have child safety seats for about 7 years after Europe had introduced them because of the concern for product liability suits over here.

I suspect there are a number of young people who were killed in auto crashes before these child restraint seats were made available in the United States because of the fear of excessive litigation in this country versus Europe.

The idea behind our system was to make the plaintiff whole. It was basically to provide that the plaintiff be made whole. That is whole system that we talk about. Joint liability was created as a risk distribution insurance

mechanism to insure that valid claimants would receive at least some compensation. However, no insurance program, not any workers' compensation program in any State, provides benefits or coverage for noneconomic damages.

The voters of California passed a State initiative in 1986 which eliminated joint liability for noneconomic damages. California trial attorney Suzel Smith, who practices for both defendants and plaintiffs, testified twice last year in the Senate that the elimination of joint liability for noneconomic damages in California has been fair and that there has been no effort to repeal or modify the law.

I think it is fundamentally unfair to have a situation where you have got a defendant who is found to be 1 percent responsible and yet, because they may have deep pockets, they will get 100 percent of the judgment.

Mrs. SCHROEDER. Mr. Chairman, I now yield 2 minutes to the distinguished gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. I thank the gentlewoman for yielding.

Mr. Chairman, we have already heard the outrage that this bill has, by discriminating against children, retirees and homemakers who may lose limbs, suffer blindness or others, without the economic loss. And they do not receive the same kind of treatment under this bill as someone with a big fat paycheck.

I want to talk a minute about joint and several liability. Mr. Chairman, we have heard the scare tactics of 1 percent fault having to pay the full damage. Well, Mr. Chairman, the majority saw an amendment proposed that would have said that only those with a substantial amount of participation, 20 percent, would be forced to pay the full freight, not those with 1 percent. That amendment was ruled out of order.

Mr. Chairman, if we have a situation where there is a problem with the design and the manufacture and the possible misrepresentation at sale, why should the victim have to sort all this out, getting three separate verdicts and having to chase down three separate defendants?

The fact is that in the business community you can insure for that loss and apportion it before it happens, and you ought not have to have that done by the defendant.

Mr. Chairman, there is a case, Gray versus Dayton Hudson Corp., where the manufacturers of children's pajamas had a product that the court found the manufacturer was uniquely aware that the product was flammable. The court noted that the pajamas in question burned almost as quickly as newsprint.

Mr. Chairman, this company could have, economically, feasibly treated the pajamas so they would not burn. This company would benefit if this amendment were not passed.

Children sleep safely tonight, Mr. Chairman, because punitive damages removed these from the market.

Let us not turn the clock on consumer protection.

Mr. HYDE. Mr. Chairman, does the gentleman from Illinois have the right to close debate?

The CHAIRMAN. The gentleman is correct. The chairman of the committee has the right to close.

Mr. HYDE. I have only one speaker left, Mr. Chairman, and I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I must say this has been frustrating because we have not been able to have a debate and all the artificial time limits on here have made this all really kind of a charade.

When you listen to people stand up and talk about how terrible it is we have punitive damages, there are no punitive damages and punitive damages are terrible. OK. But this bill does not do away with punitive damages, it just leaves it for economic interests. So if you guys think punitive damages are so bad, then be fair and do away with all of them. But you are leaving them for your fat cat friends. If you happen to have a paycheck, you get economic damages and punitive damages. If you do not have a paycheck, if you are a child who has been burned by pajamas, it is tough bunchies, you do not get anything because they just burn a child who is not worth anything because a child is not working and does not have a paycheck.

Listen to what the gentleman from Virginia is saying. If that were your child, America, you would be angry.

Now, if we are going to do away with all punitive damages, fine. But this bill does not do it. It puts a fence around wage earners and fat cats, and it allows them joint and several liability. You heard the gentleman from Wisconsin saying how terrible joint and several liability is. Yes; this does not do away with it, it just limits it to people with a paycheck. So if you have a paycheck, America, we love you. If you have a paycheck, you get both joint and several liability, which means even if they are only 1 percent liable, they will pay your whole paycheck. And you also get punitive damages. But if you do not get a paycheck, you are nothing.

So, if you are staying home taking care of your children, you do not get punitive damages and you do not get joint and several liability. If you are a child, you do not get that. If you take a drug and it ruins your reproductive organs, too bad. If you are caught up with breast implants, too bad. On and on and on.

I thought in America we had a few values left for things other than just paychecks. So, before you listen to this rhetoric that, "That is right, we don't need punitive damages and we don't need joint and several," you are not getting the whole picture. This does not do away with those. It only does away with those for noneconomic damages. If you vote "yes" on this amendment, you will have a level playing field.

Mr. Chairman, this amendment can be called the family values amendment, because it amends two provisions in this bill that have the effect of discriminating against families and family values.

When I offered this amendment in committee, although it failed narrowly, it received votes from both sides of the aisle. This amendment should receive bipartisan support from everyone in this body who believes, as I do, that we Americans value our families more than their jobs, and that our ability to have children is more valuable than any paycheck could ever be.

Without my amendment, the bill before us today will establish into law the notion that the paycheck is valued more in our system of civil justice than our families, and our right to bear children. The bill divides compensatory damages into two categories, economic and noneconomic, and says that the type of loss that includes our paychecks—wages that a victim loses because of an injury—are to be given first class treatment, while family-related losses, including loss of reproductive capacity, are to be given second-class treatment. My amendment would make sure that economic and noneconomic losses are treated equally for purposes of joint and several liability—which in many cases means the difference between collecting or not collecting your damages. My amendment also makes sure that all compensatory damages could for purposes of calculating the cap on punitive damages, and not just economic losses. Noneconomic losses reflect real injury, and that is no reason to give them second-class status.

The two-class system of justice this bill would establish hurts women and children in several ways. First, because of the enduring wage gap between women and men in the workforce, any provision that gives preferential treatment to "economic" losses, and gives second-class treatment to "noneconomic" losses, will have a disproportionately harsh impact on women, as well as on children and lower-income workers. This second-class treatment will be particularly evident in the case of women who are housewives, and women who are staying home with their children, because the damages they suffer are strongly weighted toward "noneconomic" losses.

The second way this bill devastates families has to do with reproductive harm. Many of the most infamous, dangerous products ever sold have been products like DES and the Dalkon Shield that inflicted terrible reproductive injuries upon their victims. DES exposed approximately 10 million women and men to reproductive damage. The Dalkon Shield caused injuries to the reproductive systems of thousands of women. Accutane, an anti-acne medication, caused birth defects when women used it while they were pregnant.

Harm to the reproductive system is an extremely devastating form of loss. I feel very confident that if you surveyed Americans

about whether they would consider the loss of their reproductive capacity to be of less importance to them than the loss of wages, you would find very few people who would say, as this bill does, that lost wages are more highly valued than loss of reproductive capacity. Yet, unless my amendment is adopted, this bill will write into the law of this land that lost wages are deserving of better treatment under the law than is loss of reproductive capacity.

Mr. Chairman, this amendment is truly a family values amendment. It makes sure that our justice system values the family as much as it values the paycheck. It eliminates the harsh, discriminatory impact this bill has on women, children, and lower income individuals. I urge the adoption of this family values amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 3 minutes to close debate.

Mr. HYDE. Mr. Chairman, we have heard for the last 2 days capping noneconomic damages and liability suits would hurt women. The reason given is that women stay at home, so juries cannot calculate economic damages for them in the way they can for men who work. This is a strange argument, even a bizarre argument, coming from women who have spent their political careers telling us the traditional family is dead and we had better get used to it. I never thought I would hear the gentlewoman portray an "Ozzie and Harriet" view of America.

The facts are, in fact, just the opposite. Many women now, of course, work. There is no problem in calculating the economic damages there. But even more striking, juries now regularly calculate what the market value of a woman's services to a household would cost on the open market. Every woman has done this calculation in her head. I dare say the gentlewoman from Colorado has: chauffeur, cook, nanny, housecleaner, manager of the family budget, child care professional; the list goes on and one.

I am told that when juries make this calculation, they regularly come up with six figures; in other words, more than what most families make through their jobs. Juries respect and honor the economic role of women, including homemakers.

Mr. Chairman, I am amazed that those in this Chamber who have been so self-righteous for so long about their role in defending women would make arguments that essentially demean the role of women in our society.

This amendment severely weakens the much-needed punitive damages reform.

□ 1300

It will undermine the punitive damages reform contained in the bill by lumping in highly speculative, noneconomic damages such as pain and suffering, and emotional distress, into the basis for determining punitive damages. This will result in a continuation of inflated punitive damages awarded, exactly what this bill is seeking to contain.

Mr. Chairman, I respectfully request my colleagues to vote no on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Chairman, will the gentleman yield?

Mr. HYDE. Of course, I yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Would the gentleman like to talk about children? Would he like to talk about the elderly? Would he like to talk about——

Mr. HYDE. I am one of each.

Mrs. SCHROEDER. Reproductive organs?

I also think the gentleman knows that economic damages for women in the workplace are very severely limited—who are not in the workplace, and I think——

Mr. HYDE. Reclaiming my time, Mr. Speaker, I respectfully disagree with the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Colorado [Mrs. SCHROEDER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mrs. SCHROEDER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 179, noes 247, not voting 8, as follows:

[Roll No. 219]

AYES—179

Abercrombie	DeFazio	Hefner
Ackerman	DeLauro	Hilliard
Andrews	Dellums	Hinchey
Baldacci	Deutsch	Holden
Barcia	Diaz-Balart	Hoyer
Barrett (WI)	Dicks	Jackson-Lee
Bateman	Dingell	Jefferson
Becerra	Dixon	Johnson (SD)
Beilenson	Doggett	Johnson, E.B.
Bentsen	Doyle	Johnston
Berman	Durbin	Kanjorski
Bevill	Engel	Kaptur
Bishop	English	Kennedy (MA)
Bonior	Eshoo	Kennedy (RI)
Borski	Evans	Kennelly
Boucher	Farr	Kildee
Browder	Fattah	Kleczka
Brown (CA)	Fazio	Klink
Brown (FL)	Fields (LA)	LaFalce
Brown (OH)	Filner	Lantos
Bryant (TX)	Flake	Levin
Cardin	Foglietta	Lewis (GA)
Chapman	Ford	Lincoln
Clay	Frank (MA)	Lipinski
Clayton	Frost	Lofgren
Clyburn	Furse	Lowey
Coble	Gejdenson	Luther
Coleman	Gephardt	Maloney
Collins (IL)	Gonzalez	Manton
Collins (MI)	Gordon	Markey
Conyers	Green	Martinez
Costello	Gutierrez	Mascara
Coyne	Hall (OH)	Matsui
Cramer	Harman	McCarthy
de la Garza	Hastings (FL)	McDermott
McHale	Poshard	Tejeda
McKinney	Rahall	Thompson
McNulty	Reed	Thornton
Meehan	Reynolds	Thurman
Meek	Richardson	Torres
Menendez	Rivers	Torricelli
Mfume	Rose	Towns
Miller (CA)	Roybal-Allard	Traficant
Mineta	Rush	Tucker
Minge	Sabo	Velazquez
Mink	Sanders	Vento
Moakley	Sawyer	Visclosky
Morella	Schiff	Volkmer
Murtha	Schroeder	Ward
Nadler	Schumer	Waters
Neal	Scott	Watt (NC)
Oberstar	Serrano	Waxman
Obey	Skaggs	Williams
Olver	Skelton	Wilson
Ortiz	Slaughter	Wise
Owens	Spratt	Woolsey
Pallone	Stark	Wyden
Pastor	Stokes	Wynn
Payne (NJ)	Studds	Yates
Peterson (FL)	Stupak	

NOES—247

Allard	Everett	Leach
Archer	Ewing	Lewis (CA)
Armey	Fawell	Lewis (KY)
Bachus	Fields (TX)	Lightfoot
Baesler	Flanagan	Linder
Baker (CA)	Foley	Livingston
Baker (LA)	Forbes	Longley
Ballenger	Fowler	Lucas
Barr	Fox	Manzullo
Barrett (NE)	Franks (CT)	Martini
Bartlett	Franks (NJ)	McCollum
Barton	Frelinghuysen	McDade
Bass	Frisa	McHugh
Bereuter	Funderburk	McInnis
Bilbray	Gallegly	McIntosh
Bilirakis	Ganske	McKeon
Bliley	Gekas	Metcalf
Blute	Geren	Meyers
Boehlert	Gilchrest	Mica
Bonilla	Gillmor	Miller (FL)
Bono	Gilman	Molinari
Brewster	Goodlatte	Mollohan
Brownback	Goodling	Montgomery
Bryant (TN)	Goss	Moorhead
Bunn	Graham	Moran
Bunning	Greenwood	Myers
Burr	Gunderson	Myrick
Burton	Gutknecht	Nethercutt
Buyer	Hall (TX)	Neumann
Callahan	Hamilton	Ney
Calvert	Hancock	Norwood
Camp	Hansen	Nussle
Canady	Hastert	Orton
Castle	Hastings (WA)	Oxley
Chabot	Hayes	Packard
Chambliss	Hayworth	Parker
Chenoweth	Hefley	Paxon
Christensen	Heineman	Payne (VA)
Chrysler	Herger	Peterson (MN)
Clement	Hilleary	Petri
Clinger	Hobson	Pickett
Coburn	Hoekstra	Pombo
Collins (GA)	Hoke	Pomeroy
Combest	Horn	Porter
Condit	Hostettler	Portman
Cooley	Houghton	Pryce
Cox	Hunter	Quillen
Crane	Hutchinson	Quinn
Crapo	Hyde	Radanovich
Cremeans	Inglis	Ramstad
Cubin	Jacobs	Regula
Cunningham	Johnson (CT)	Riggs
Danner	Johnson, Sam	Roberts
Davis	Jones	Roemer
Deal	Kasich	Rogers
DeLay	Kelly	Rohrabacher
Dickey	Kim	Ros-Lehtinen
Dooley	King	Roth
Doolittle	Kingston	Roukema
Dornan	Klug	Royce
Dreier	Knollenberg	Salmon
Duncan	Kolbe	Sanford
Dunn	LaHood	Saxton
Edwards	Largent	Scarborough
Ehlers	Latham	Schaefer
Ehrlich	LaTourette	Seastrand
Emerson	Laughlin	Sensenbrenner
Ensign	Lazio	Shadegg

Shaw	Stump	Walsh
Shays	Talent	Wamp
Shuster	Tanner	Weldon (FL)
Sisisky	Tate	Weldon (PA)
Skeen	Tauzin	Weller
Smith (MI)	Taylor (MS)	White
Smith (NJ)	Taylor (NC)	Whitfield
Smith (TX)	Thomas	Wicker
Smith (WA)	Thornberry	Wolf
Solomon	Tiahrt	Young (AK)
Souder	Torkildsen	Young (FL)
Spence	Upton	Zeliff
Stearns	Vucanovich	Zimmer
Stenholm	Waldholtz	
Stockman	Walker	

NOT VOTING—8

Boehner	LoBiondo	Rangel
Gibbons	McCrery	Watts (OK)
Istook	Pelosi	

□ 1320

The Clerk announced the following pair:

On this vote:

Mr. Rangel, with Mr. Watts of Oklahoma for against.

Mr. CLEMENT changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. PELOSI. Mr. Chairman, I was unavoidably absent for rollcall No. 219, the amendment offered by the gentlewoman from Colorado, Mrs. SCHROEDER. Had I been present I would have voted "aye".

I support the Schroeder amendment which would strike from the bill the section which abolishes joint and several liability and would modify the bill's cap on punitive damage.

As written, this bill will discriminate against women, children, and the elderly by placing greater value on economic losses over noneconomic losses. Similarly, placing a cap on punitive damages awards also discriminates against these groups.

Women, for example, will suffer because noneconomic losses such as reproductive capacity and physical disfigurement are much harder to qualify than annual earning capacity. In addition, women's earning capacity is historically and currently less than men and would be punished by this bill.

The Schroeder amendment acknowledges this legal discrimination and deserves our support.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 12, strike lines 8 through 11.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

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

Mr. Chairman, every State has statutes of limitation that prescribe the period of time within which a law must be brought. Similar but not identical is a statute of repose. Statutes of repose specify the period of time after which a manufacturer may not be sued for an alleged injury caused by its product. Consequently, a statute of limitations specifies when an existing right to bring a suit expires, while statutes of repose specify the period of time after which no right to sue will be recognized at all.

Seventeen States have enacted statutes of repose, but they vary in length and in their applicability to various products. A uniform statute of repose is needed in order to provide certainty and finality in commercial transactions. Section 108 of H.R. 956 would establish a 15-year Federal statute of repose in product liability cases. Thus, a product liability action against a manufacturer would be barred 15 years after the date of first delivery of the product.

To be fair to plaintiffs, the provision would not apply in instances involving a latent illness—a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product. In addition, the statute of repose does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved where the express warranty given was longer than 15 years.

This legislation is similar to legislation that passed the Congress last year known as the General Aviation Revitalization Act of 1994 (Public Law 103–298). That Federal statute created an 18-year statute of repose for general aviation aircraft.

Section 108 is intended to reflect the view that, after a reasonable length of time, manufacturers should be free from the burden of disruptive litigation and potential liability. It recognizes that difficulty that exists in locating reliable evidence and defending claims many years after a product has been manufactured. It also prevents the unfairness that occurs when manufacturers are held liable for goods that have been beyond their control and subject to misuse or alteration, perhaps for decades. A statute of repose also helps to avoid the possibility of juries unfairly imposing current legal and technological standards on products manufactured many years prior to suit.

Even though manufacturers of older products frequently are successful in defense of these lawsuits they nevertheless must invest time and money into legal and transactional costs. These costs are wasted costs that could be better applied to create jobs and assist American companies in competing globally.

My amendment is aimed in ensuring that this statute of repose section does what it is intended to do. As part of the effort to combine the Judiciary Committee's legal standards bill with a product liability measure reported by the Commerce Committee, new language was inserted into the statute of repose section. It says "(T)his subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical losses." Though unintended, this new language could effectively render the statute of repose provision useless.

My amendment is directed at deleting this one sentence because it would create a giant loophole for trial lawyers and would reverse the work of both committees in seeking a fair and effective statute of repose. Under the language I would strike, all a trial lawyer would have to show—to avoid the statute of repose—is that his client did not receive or was ineligible to receive full compensation for medical expenses. So, if there was any insurance copayment provision, if there was any insurance deductible, if reimbursed medical expenses are limited in any way, such as ordinarily and customary expense limitations—the statute of repose might not apply. Once the statute of repose is successfully evaded, a litigant could then seek additional economic damages, noneconomic damages and punitive damages. This is certainly not the result that the Judiciary Committee intended.

Unless this sentence is stricken, it will prompt further lawsuit abuse. Under this exception language, a manufacturer seeking to invoke the statute of repose would first have to litigate the issue of whether or not a claimant has received full compensation from medical losses. That is, has every medical test, prescription, bandage or Band-Aid been fully covered by insurance? This loophole would encourage a plaintiff to continue to claim medical expenses for as long as possible and to the maximum degree possible, so as to prevent full payment from triggering the statute of repose and its protections.

It is important to point out that the European Economic Community has a 10-year statute of repose with no such language contained within its provisions. Japan has a 10-year statute of repose with no such language. Again 17 States currently have statutes of repose, none has language like this in it. No such language was contained in the General Aviation Revitalization Act.

This language is an unwise, unfair and unworkable addition to an otherwise good strong and effective statute repose section. It must be removed if this House is to have the opportunity to vote for a statute of repose that

really helps American manufacturers and encourages American productivity.

I strongly urge the adoption of my amendment. It will ensure that section 108 will be effective and provide manufacturers with the kind of certainty and finality that they deserve.

The CHAIRMAN. Is there a Member in opposition to the amendment?

Mr. BERMAN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from California is recognized for 10 minutes.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, will the chairman of the committee respond to a question? Mr. Chairman, I would ask, the language in the bill is changed in one of the sections. I ask a question during the hearings as to whether or not asbestos cases would be exempted from this bill. In committee I was told that asbestos cases would not be affected by the passage of this bill.

With the change and with this amendment, is that still the case?

Mr. HYDE. Mr. Chairman, if the gentleman will yield, this amendment does not change that.

Mr. SCOTT. So asbestos cases are not changed as a result either of the amendment or the passage of the bill?

Mr. HYDE. That is correct.

Mr. BERMAN. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, we are dealing here probably with the only amendment I think on the status of repose. When I saw the language as it came out of the two committees and was reintroduced in this new bill, H.R. 1075, I said, well, this is not a bad effort. We are federalizing the product liability law in this one title. We will not even talk about what we are doing in the rest of the bill. We are providing the manufacturers with a certainty in terms of the amount of years. We are exempting it based on an amendment that the gentleman from Illinois, the chairman, accepted in committee for express warranties. If we could just get the Bryant amendment, to deal with a manufacturer who intentionally conceals problems with his product. We have a provision in the bill that says this subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses.

I thought with the addition of the Bryant amendment, which the Committee on Rules prevented him from offering, you could have a reasonable statute of repose as part of this federalization of the product liabilities scheme.

Lo and behold, the Committee on Rules does not grant Mr. BRYANT'S amendment, but instead grants an amendment that says when the person is injured by the defective product, if it occurs after the period of the statute of repose, even if he has no insurance, no other way of paying any of his medical bills, we are going to put him off on the county, put him into indigency, make him go on the dole in order to pay for the injuries which he suffered, which could be very extensive, because of this amendment.

□ 1330

What you looked like you were giving, you now, in substantial part, have taken away with this amendment. I think this is the wrong amendment. I am surprised that gentleman is offering it. It was a balance, it was a nice balance to the proposal. It is being totally thrown out of whack.

Mr. HYDE. Mr. Chairman, I yield myself 30 seconds.

I am equally surprised that the gentleman is opposing this amendment. The language I seek to strike was not in the bill in our committee. It was put in by the Committee on Commerce, and I think upon mature reflection it undoes the purpose of the statute of repose. It would leave it open-ended, almost impossible to predict or fulfill, and, therefore, if you are for a statute of repose, I should think you would be for having it a definite, time-certain.

Mr. BERMAN. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, it is a balance. We are not talking about punitives. We are not talking about pain and suffering. We are not talking about wage loss. We are talking about the medical bills this injured person has to pay to get treatment. In this small set of cases, which side do we come down on? Do we come down on the manufacturer of the machinery, the product, or do we come down on the side of plaintiff who has no medical insurance, who has no way of paying his medical bills?

Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, a moment ago, the gentleman from Illinois [Mr. HYDE] talked about the European Community statute of repose. As always, the other side likes to quote sources for their purposes but leave out the more relevant facts about the sources that might say something about the other side. The European Community provides cradle to grave medical care for all of its citizens. We do not do that in the United States. So the statute of repose which says that after 15 years you cannot sue somebody for making a defective product has a provision attached to it that says that does not count if the person would be made unable to get their medical care paid for.

Only if they have been able to cover their medical care does the manufacturer have a defective product escape liability 15 years after it is manufactured. It is a great irony. The gentleman from California [Mr. BERMAN] referred to it a moment ago. Of all things, we ask for time to offer amendments to make an extremely unreasonable bill a little more reasonable. They do not grant time on the reasonable amendments. They grant time to the chairman of the committee, who could have written the bill any way he wanted to, to make the bill worse for the average person.

A 15-year statute of repose is a new addition to American law. We have one reasonable exception in here. It does not stop a guy that manufactured a bad product that blew up and hurt somebody from being held liable unless the victim gets their medical care taken care of. The gentleman from Illinois [Mr. HYDE] would say, forget the victim. It does not matter whether he gets his medical care taken care of or not. After 15 years even if the product was totally defective, totally responsible for hurting or killing somebody, you are not going to be able to recover anything.

I think that is absurd. It is, in my view, completely opposite of what the American people would want us to be doing.

I had an amendment which was designed to make this statute of repose a little more workable and a little more reasonable. What it would have said is, OK, we have a 15-year statute of repose. At the end of 15 years, you cannot sue somebody even if their product is defective unless that person who made the product knew the product was defective at the time it was made. In that case, they do not get the benefit of the 15-year cutoff. But the Republicans would not let us offer that amendment today. Instead they let the gentleman from Illinois [Mr. HYDE] offer an amendment that says, too bad if you cannot cover you medical care. After 15 years, you are out of luck.

Unfortunately, for you so-called conservatives, you phony conservatives on the other side, what that is going to mean most of time is that taxpayers are going to have to pay for that guy's medical care while you let your rich friends off the hook.

Mr. HYDE. Mr. Chairman, I yield myself 1 minute. The gentleman objected last night to mentioning the American Trial Lawyers. You thought that was an invidious comparison. I did not yield to the gentleman. I did not yield to you.

The gentleman has no problem attacking us and linking us with rich friends and that sort of thing. The gentleman ought to do and practice what he preaches.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, I rise in support of the Hyde amendment. The statute of repose currently in H.R.

956 has been threatened by language that has been added to the bill after it left the Committee on the Judiciary that has created a giant loophole in the statute of repose. This one provision in the law says that unless, unless all possible damages or health care is met by the insurance policy or by the health care program, that the statute of repose will not be effective. There are no insurance policies that provide that kind of protection.

Certainly the Federal policies that many of us are under do not provide that kind of protection. It gives the trial lawyers a giant loophole that will enable them in almost every instance to open up the issue of whether the statute of repose is to be effective or not.

The loophole will prolong litigation because we will first have to try the issue of whether all the possible damages, health care needs have been met before we ever go on to the basic issue that is involved, the language that will destroy one of the major goals of the product liability reform legislation in having finality of an issue 15 years after the product was issued.

The Hyde amendment is supported by many national organizations. It is necessary to make this bill effective.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Chairman, there is considerable irony in the fact that the distinguished chair of the Committee on the Judiciary should lead off the presentation of this amendment by pointing to the example of what 17 States do with their statutes of repose, because the whole theory of this bill is to junk States' rights.

If the people in Illinois in their constitution want a statute of repose with or without this, I say that is fine. If the people in Texas want it, that is fine. It is not our job to come along and junk States' rights and say, you have to do it the way we say do it in Washington. That is what is the theory and the approach of this bill, is not to rely on the States but rather to consider and argue and to contend that we have this terrible patchwork of States' laws that pose a great burden.

There was a time in this country, my colleagues, when that terrible patchwork that is criticized here on this floor today was called something a little different. It was called the laboratory of democracy, the fact that each State might look at the laws of its civil justice system and decide what is most appropriate. And it is that laboratory of democracy with reference to our State civil justice system that is being thrown out the window of this capitol building by this piece of legislation.

There is a second problem, of course, alluded to by my friend, the gentleman from Texas [Mr. BRYANT]. And that is that this amendment takes a blame the victim approach. The problem here with this whole statute of repose is that it allows every manufacturer in America, and that is really all that the section does, to write on its product after 15 years, do not look to us, buddy. It says, we will not be responsible no matter how defective our product for anything after 15 years.

And that would be fine and proper, except for the fact that they allow the manufacturer to do that in invisible ink. The same manufacturer can advertise on the Home Shopping Network this afternoon that you get a lifetime guarantee with our product. Indeed, you do. It is just that you do not get any right to recover after 15 years. So there is no burden placed on the manufacturer to identify the fact that in invisible ink we have limited the rights of the victim.

I say blame the victim because the choice with this specific amendment is between those who put defective products in the stream of commerce throughout this country and those who do not have the insurance even to cover their own medical bills, because that is what this very good language took care of.

One of the problems in the consideration of this entire week's legislative work in this Capitol is our failure to listen to the victims, to the people that have lost life and their family, a limb, those people have been excluded in this debate.

The CHAIRMAN. The gentleman from California [Mr. BERMAN] has 30 seconds remaining, and the gentleman from Illinois [Mr. HYDE] has the right to close debate.

Mr. HYDE. Mr. Chairman, I yield 30 seconds to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Let me respond, first of all, there is an expressed warranty provision in that that would cover the situation the gentleman mentioned. Let me say to my colleagues that when working on the statute of repose, we were looking for a particular length of time for the statute of repose. we found, to our amazement, that the longest statute of repose of any State is the State of Texas, the Lone Start State. And basically the statute of repose that is in this statute or in this bill copies almost word for word the Texas statute.

Mr. BERMAN. Mr. Chairman, I yield myself the balance of my time.

Let the body just remember, the product liability bill that the Committee on Energy and Commerce over several years has been passing and promoting on a bipartisan basis, the one that the gentleman from Ohio [Mr. OXLEY] always supported, was a product liability bill limiting the statute of repose to capital goods and providing 25 years. This is any product, any manufactured product, any manufactured product 15 years. And now you are taking out the medical benefit.

Mr. CHAIRMAN. All time in opposition to the amendment has expired. The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield such time as me may consume to the gentleman from Wisconsin [Mr. SENSENBRENNER], a member of the committee, to close debate.

Mr. SENSENBRENNER. Mr. Chairman, I think to close debate it is important for us to focus on what a statute of repose is. A statute of repose is a limit during which period a lawsuit can be filed alleging negligence in the manufacture of that product.

The statute of repose here that is proposed is 15 years. That means that the product will have to be on the market and be used for 15 years, during which period of time a lawsuit can be filed and the manufacturer exposes himself to liability.

Is not 15 years long enough? If the product is defective, should not that defect become apparent within a 15-year period of time? I think the answer to that question is yes.

The gentleman from Ohio [Mr. OXLEY] has correctly stated that the 15-year statute of repose that is proposed in this bill is the longest of the State statutes of repose. So by federalizing this issue, we are in effect extending the time for which lawsuits can be filed in most States.

The amendment that the gentleman from Illinois is proposing is one that is very important, and that is taking out this last sentence, which was put in the statute of repose section by mistake, that says that if there is a penny of copayment or a penny of a deductible, then there is no statute of repose whatsoever, no limitation on when the lawsuit can be brought.

□ 1345

That will mean much higher product liability insurance premiums that manufacturers will have to pay. Who pays those product liability insurance premiums? We all do, as consumers, because those premiums are a cost of doing business. They are folded into the cost of the product.

By passing this amendment and establishing a standard of repose, we can lower those premiums, and thus lower the cost to our constituents. I urge an "aye" vote.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 104-72.

AMENDMENT OFFERED BY MR. SCHUMER

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

The Clerk read as follows:

Amendment offered by Mr. SCHUMER: Page 13, redesignate section 110 as 111 and insert after line 3 the following:

SEC. 110. SUNSHINE, ANTI-SECRECY, CONSUMER EMPOWERMENT, AND LITIGATION AVOIDANCE.

(a) IN GENERAL.—To empower consumers with the information to avoid defective products, court records in all product liability actions are presumed to be open to the general public. No court order or opinion in the adjudication of a product liability action may be sealed. No court record, including records obtained through discovery, whether or not formally filed with the court, may be sealed, subjected to a protective order, or otherwise have access restricted except through a court order based upon particularized findings of fact that—

(1) such order would not restrict the disclosure of information which is relevant to public health or safety; or

(2)(A) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(B) the requested order is no broader than necessary to protect the privacy interest asserted.

No such order shall continue in effect after the entry of final judgment or other final disposition, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) or (2) have been met.

(b) BURDEN.—The party who is the proponent for the entry of an order, as provided under subsection (a), shall have the burden of proof in obtaining such an order.

(c) AGREEMENT.—No agreement between or among parties in a product liability action filed in a State or Federal court may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such product liability action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

(d) INTERVENTION.—Any person may intervene as a matter of right in a product liability action for the limited purpose of participating in proceedings considering limitation of access to records upon payment of the fee required for filing a plea in intervention.

The CHAIRMAN. Pursuant to the rule, the gentleman from New York [Mr. SCHUMER] and a Member opposed will each be recognized for 10 minutes.

The Chair assumes the gentleman from Illinois [Mr. HYDE] will manage the time in opposition to the amendment.

The Chair recognizes the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I yield myself 3 minutes and 15 seconds.

Mr. Chairman, I have been so used to open rules that I have forgotten how a closed rule functions.

Mr. Chairman, if there ever was a commonsense legal reform, this amendment is it. Every year hundreds of manufacturers who know their products are dangerous hide behind court secrecy orders to conceal the truth from the American public.

As a result, thousands of innocent, men, women, and children are maimed, poisoned, injured, and even killed simply because they never learn the truth. The truth and their fates are sealed in secret by lawyers behind closed doors. In some cases, secrecy order follows secrecy order, year after year, while the list of mutilated and dead grows longer and longer.

Let me just give one case, because this has been so much a battle of the anecdotes, that shocked me. It ought to shock everybody.

There is no more innocent activity than little kids going out to play. Yet, for over 13 years, an equipment manufacturer of playground equipment sold a merry-go-round that it knew was causing serious injury to scores of small children, mostly around 5 or 7 years old, children like little Rebecca Walsh, who had two fingers chopped off; like Larry Espinosa and Dale Lukens, whose bones were crushed; other children who had their hands and feet cut off. These kids were hurt and their lives forever twisted.

In spite of dozens of lawsuits against the manufacturer, because those lawsuits were settled in secret, the parents of these kids never had a chance to protect their children, and their children never had a chance to grow up whole.

The sad truth is that the history of product liability litigation is full of cases like that.

Mr. Speaker, I do not know what goes on in the minds of the men and women who sell these products, even after they know they are killing and injuring innocent people, but I do know one way to stop it. That is to open up the courthouse doors and shine the bright light of day on these dangerous products. That is all this amendment does. I hope we could get bipartisan support it. It bars courts from sealing their orders in product liability cases. It prohibits any other record in a product liability case from being restricted, unless, and there is indeed an exception, the court specifically finds that the order will not restrict information relating to public health or safety, or that some specific secrecy interest clearly outweighs the public interest in disclosing public health and safety.

In other words, there can be sealed orders, but the burden of proof ought to be the other way. When health and safety are at stake, the burden of proof ought to be that the order be open.

Finally, Mr. Chairman, it permits product liability settlement agreements that restrict parties from giving information to regulatory agencies. This is real common sense. I urge my colleagues to vote for this amendment. It is a vote against secrecy, for openness, and for the right of all Americans to know the truth about dangerous products.

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

Mr. Chairman, I think this is a very dangerous amendment. It is one that should be defeated. It would impair litigants' rights to maintain their privacy, protect valuable property interests, and interfere with settling legal disputes.

Massive amounts of private information are produced through the modern discovery process. The amendment requires the court to weigh the value of confidentiality versus the public interest in disclosure. To conduct such a weighing process on every document that is private would indeed weigh the courts down in endless disputes. Disputes over discovery issues would skyrocket, and further clog our courts.

The amendment would restrict judicial discretion in protecting confidential information, and would create lawsuit abuse, not eliminate it. The courts would have to conduct extensive and complex factual inquiries, which could include extensive hearings on and in camera review of thousands of documents. Such in camera review could result in an unfair and prejudicial prejudgment of the case.

This amendment would make it much more difficult to settle cases. It would prevent the mutual agreement between parties on issues of confidentiality, and would result in more contentious trials, consuming more time and attention than ever before.

There is no need for this amendment. The proponents of this amendment may trot out some tragic anecdotes allegedly supporting forced disclosure, but in each case the proponents of this amendment should be asked whether or not such information relating specifically to the alleged defect was not available to the public prior to the protective order, and in many cases, long before the lawsuits were even filed.

There is proprietary information, private information, information that does not belong in the public domain, and the judge now has ample authority to rule on whether this information shall be sealed or whether it should be made public. It is something that is best handled by court rules, not legislation.

Mr. Chairman, I do not know what else to call this but the Ralph Nader amendment, because it would permit any citizen at any time to intervene to get information that it wants, and that may or may not be helpful, but as a rule of law, it is the sort of thing that would obstruct the settlement of cases. It would make people very reluctant to disclose information on a nonconfidential basis.

I would sincerely hope that this gutting amendment would be defeated.

Mr. Chairman, this amendment represents a mischievous effort to compromise confidential information with potential adverse consequences for both businesses and injured parties. The amendment raises a new subject we did not consider in the Committee on the Judiciary.

The amendment can be interpreted as including a flat prohibition on sealing a court

order or opinion in a product liability case. This prohibition—in contrast to the prohibition relating to a court record—apparently admits of no exception and may result in compromising trade secrets of American firms if the court order or opinion refers to such secrets.

By providing for public access to material obtained through discovery, we place in the public domain information that may have no relevance to pending litigation. The evidentiary standards for obtaining information through discovery are much broader than those applicable in a trial—a fact that renders inappropriate treating the discovery process like a public proceeding. The need to obtain a court order to restrict public access to records obtained through discovery can be expected to add immeasurably to the transaction costs of litigation—as parties go to court to safeguard the confidentiality of the discovery process. Alternatively, parties to litigation can be expected to resist discovery in order to keep irrelevant material from reaching the public domain. Efforts to avoid discovery or limit its scope may also add greatly to the transaction costs of litigation.

Providing that orders protecting confidentiality do not remain in effect after final disposition unless separate particularized findings are made by the court also complicates and prolongs the litigation process. Courts will be bogged down in considering such matters, and attorneys will invest considerable time and effort at additional costs to the litigants. Consumers will end up paying higher prices because of increased legal fees.

The amendment also discourages settlements by barring agreements between parties that purport to restrict disclosure of information to Government agencies.

Finally, this amendment adds to the costs of litigation—and exacerbates problems of delay—by allowing any person to intervene in a product liability action to participate in proceedings considering limitation of access to records. Although facilitating opportunities for some third parties to intervene in limited circumstances may be justifiable, the unlimited intervention mechanism this amendment establishes needlessly encumbers the litigation process.

Although I am committed to facilitating public access to relevant safety-related information, this shotgun approach to a complex subject is not the answer. Issues of confidentiality implicate not only the public's right to know but also the rights of victims to lead private lives and the rights of American corporations to protect proprietary information from foreign competitors; American jobs may depend on it.

Next week, the Judicial Conference of the United States will be considering proposed changes in rule 26(c) of the Federal Rules of Civil Procedure relating to protective orders. We should not precipitously preempt that process today.

I urge my colleagues to vote against this amendment.

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

Mr. SCHUMER. Mr. Chairman, I yield 3 minutes to the gentlewoman from Illinois [Mrs. COLLINS], a coauthor of the amendment and ranking member of the former Committee on Government Operations, which is now the Committee on Government Reform and Oversight.

Mrs. COLLINS of Illinois. Mr. Chairman, one of the most questionable, if not unethical practices in product liability suits today is the use of court orders to bar public disclosure of manufacturer's information concerning product safety.

These orders result where, in a claim involving a defective product, the plaintiff's attorney, for example, needs documents and other evidence to establish a claim. Often, the manufacturer-defendant will seek a court order that requires the plaintiff, at the end of the case, to destroy or return to the manufacturer the evidence, without making it public. Since the plaintiff's attorney has a duty to protect the interests of his or her client—as opposed to those of the public at large—that attorney acquiesces to this request and agrees to seek the court order. The agreements are blessed by the court and then the documents are placed under confidential seal. Thus, access to product information comes at a heavy price.

In an interesting book describing litigation of asbestos cases, these bargaining tactics and their consequences that are harmful to the general public were graphically illustrated. After a Federal judge literally locked the lawyers in a room for 16 hours a day, 5 days a week, for 3 weeks, the parties agreed to a financial settlement of certain worker claims. In exchange, the plaintiff's attorneys agreed that whatever evidence they obtained from discovery could not be passed along to subsequent claimants. All papers were then sealed by the court.

One of the plaintiff's lawyers, acknowledging he had made a serious mistake in agreeing to the settlement terms, later said of the court's action:

> As a result, the disposition of Richard Gaze—a company physician—which provided powerful evidence of what the Pittsburgh Corning people really knew about asbestos disease, and when they knew it, remained under wraps for the next 5½ years.

Indeed, during that time period, the company denied to hundreds of claimants that it had any knowledge of this hazard until the mid-1960's, a contention that plaintiff's lawyers obviously could not rebut.

Unfortunately, this is not an isolated case. A serious design defect in the heating systems of Chevy Corvairs, first discovered in the mid-1960's, was not disclosed until 1971 because of a protective order. In another instance, involving the crash of several Pan Am 707's an attorney said that if certain in-house and FAA reports had not been sealed, "no one would have ever gotten on a Pan Am plane again." Similar orders were also entered into in Dalkon Shield cases. The list goes on and on.

It is time we put a halt to these orders, Mr. Chairman. The Schumer-Doggett-Collins amendment before you would do just that.

Our amendment would prevent the sealing of court records in all product liability actions, except under limited circumstances. Such court records could be sealed only through a court order in those instances in which, first, the order would not restrict the disclosure of information which is relevant to public health or safety, or second, the need to maintain confidentiality would substantially outweigh the public interest in disclosing potential health or safety hazards, and the order would be no broader than necessary to protect the privacy interest asserted.

The benefits of this amendment are numerous. First, it will promote greater public safety. If repeated litigation demonstrates that a product has a serious design flaw, or contains inadequate warnings, the public will be appraised of this information and can take appropriate action. Similarly, liberal disclosure will put pressure on a manufacturer to correct dangerous aspects of a product which might not be changed if the manufacturer could easily avoid the responsibility for its flaws.

The amendment will streamline the litigation process. Parties and courts involved in the trial of subsequent cases over the safety of a product will no longer face time-consuming and costly discovery procedures. They will not have to re-create the same information or relocate identical documents, starting from scratch. Consequently, attorney's fees will be reduced, and the choice of whether or not to bring a product liability claim to court will not be based on the ability to afford one.

The backlog of cases often faced by courts would be reduced and fairer and more consistent verdicts may result since juries would have the same facts before them.

Mr. Chairman, this issue's importance is reflected by the American Bar Association's recommendations, stemming back to 1986, that courts allow disclosure of relevant product information. The Schumer-Doggett-Collins amendment offers many positive benefits to the public, foremost of which is enhancement of public safety.

I urge support for this amendment, Mr. Chairman. It is time we let the sun shine in on corporate secrecy.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a member of the committee.

Mr. SENSENBRENNER. Mr. Chairman, I would like to make two points. First, under the present procedure, whether or not court records are sealed is a matter of judicial discretion. I believe it ought to be kept that way. The judge who presided over the case, and assuming that there is a settlement offer that is coming before the court for approval, makes a determination on whether or not sealing the records is a reasonable request, and I think we

ought to, in this instance, trust the judges to represent what is in the public interest.

This has to be done on a case-by-case basis. That is not to say that all records should be sealed, but it also is not to say that all records should be open, which is what the gentleman from New York is proposing.

The second problem with this amendment is, I think, what the gentleman from New York is trying to do is to do the work for lawyers in subsequent lawsuits on the same issue. Rather than doing their own discovery and finding out their own facts, they can simply go to the courthouse and rummage through the records that are already on file. Consequently, they end up not having to do as much work.

Mr. Chairman, we all know that most of these types of cases are taken on a contingency fee basis. By opening up the records and not having the lawyers do the work that they would have to do, they are going to end up spending less time, but their fees are not going to be reduced, because the fees are a certain percentage of the amount that is recovered.

For all these reasons, I think this amendment is a bad one, and ought to be defeated.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman yields back 1 minute to the gentleman from Illinois.

Mr. SCHUMER. Mr. Chairman, I yield the remainder of my time to the gentleman from Texas [Mr. DOGGETT], who has been a leader on this issue, and has provided invaluable help and assistance on this amendment.

The CHAIRMAN. Based on the 15 seconds consumed by the gentleman from New York [Mr. SCHUMER], the gentleman from Texas [Mr. DOGGETT] is recognized for 3¾ minutes.

Mr. DOGGETT. Mr. Chairman, the philosophy of this amendment is embodied in the first sentence, which is to empower individual consumers with the information to avoid defective products; court records in all product liability actions are presumed to be open.

The thrust of this amendment is that if we empower people to be responsible, to have the information to avoid defective products, they avoid litigation, and trial lawyers and all the problems that the authors of this legislation say their legislation is designed to resolve.

It is rather shocking to hear a series of contradictions from those who oppose the amendment. First they tell us that we should trust the judges. Mr. Chairman, if we trusted the judges of the 50 States, we would not be here this afternoon with this piece of legislation in the first place. The whole theory of House Resolution 1075 is that this body does not trust the judges of the 50 States, nor the 50 legislatures.

If we are going to address the problem as they see it, as they see fit to do it, why do we not try to do something constructive? That is what this amendment does. It says secrecy is not in the interests of the American people.

In fact, court records across this country, and this is not an anecdote, it is based on fact, court records across this country hide facts that literally kill and maim thousands of people in this country.

Two States have done something about it. The State of Florida passed a statute on the subject, and they have done a great deal to focus a little Florida sunshine, which is what we are trying to copy in this piece of legislation, so people are not deceived by facts that are sealed and hidden away in some dusty file drawer from the people that it could protect.

□ 1400

The second State is my own State of Texas, where we chose to do it by trusting the judges in a court rule of procedure to deal with this problem.

Of course what we do in this amendment does relate to court rules of procedure just as the rest of the bill does in dealing with bifurcation of punitive damages which is a rule of procedure that the majority has not the least bit of concern about interfering with the States on that.

The suggestion that this particular amendment would open all records belies the very words of the amendment. It does not do that. There are legitimate privacy interests in every lawsuit. There are legitimate trade secrets. All that we ask is that the better law of the Federal jurisdictions, the law that prevails, I think, in most Federal courts today, be codified in this statute as we are codifying other law, and require the trial judge to do what only judges can do if they act in their proper role, and, that is, to balance the interest. Is the public's interest in avoiding more deaths and more injuries? Does it outweigh whatever interest is claimed by the manufacturer?

Let me give Members some specific examples of where this kind of amendment, if it had been the law of this land, would have made the difference and would have prevented the destruction, interference and harm of thousands of lives.

One of these examples is the whole problem with breast implants. In 1984, 8 years before the major crisis over breast implants, there was information available concerning the danger of these implants and it was locked up in San Francisco in a vault, sealed in the first places of this litigation. That information could have been there so that those women avoided those breast implants in the first place. Instead, we have the literal and physical scars on many American women that would have never been there had they known the dangers that were locked up in those file drawers.

Another good example comes from the State of Florida, where it enacted this statute, where one pharmaceutical manufacturer of an arthritis medication actually convinced a court judge to prohibit any of the documents, not from being shared with Ralph Nader but from being shared with the Federal Food and Drug Administration so that they could do something about it. Indeed, the Food and Drug Administration learned much of the problems with breast implants, not from anything filed there but from what was sealed and secreted away in that vault in San Francisco.

That is the kind of thing that is happening in this country ever single day where people come in with one price to settle a lawsuit if the documents are open and one price if they are sealed.

Of course the person who is facing large medical bills, a serious threat to their earnings stream, many times is encouraged to take the higher price. But somewhere in all this the public interest gets left out. The role that we could play is by empowering citizens across this country to protect their own interests by knowing of the dangers that they face in the marketplace, making an informed decision, not locking this away but opening it up.

I would trust the judge to use this statute as we propose it through this amendment to carefully balance the interest, but to assume and presume that this Government operates best when it operates in the sunshine, when it operates in the open. That is what this amendment is all about, against secrecy, in favor of empowering the people of this country to protect themselves.

It is incredible that it would not be accepted because it represents true commonsense legal reform.

Mr. HYDE. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Ohio [Mr. OXLEY], and I ask that the gentleman yield to me briefly.

Mr. OXLEY. I yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentleman for yielding. I would simply like to state the rule 26(c) of the Federal Rules of Civil Procedure has to do with protective orders and it provides the trial judge with authority in an appropriate case to seal documents or not to seal them. I prefer to leave it to the trial judge who is on the firing line and has the case before him or her and can make these decisions based on the type of case, the type of information, the demands of privacy, the embarrassment, the humiliation, the revelation of proprietary information or not. These are tough decisions, they are difficult decisions, and why should we make it for the judge and require the disclosure of these things?

I personally would like to know the formula for making Coca-Cola. I would suggest that has some monetary value. I would suggest the Coca-Cola people want to keep it quiet. In a lawsuit, why require its disclosure, if it is not essential to the litigation?

I yield to my friend, the gentlewoman from Chicago, IL.

Mrs. COLLINS of Illinois. I thank the gentleman for yielding. But, you know, if it were found that there was something in Coca-Cola that was killing folk, I certainly would want everybody to know about that.

Mr. HYDE. I certainly would expect our counsel or the plaintiff's counsel to urge the trial judge to disclose that if it was——

Mrs. COLLINS of Illinois. And I would urge them not to——

The CHAIRMAN. The Chair observes that the gentleman from Ohio [Mr. OXLEY] controls the time.

Mr. HYDE. The Chair is correct. I certainly should not have yielded, but she looked at me and I could not say no.

Mrs. COLLINS of Illinois. I know I have great charm. I thank the gentleman for recognizing it.

Mr. HYDE. I thank the gentleman for yielding.

Mr. OXLEY. Mr. Chairman, I had a judge tell me one time that a poorly settled lawsuit is much better than a well-tried one. I found in my experience that that was the case.

Indeed this provision, if it were to be adopted, the Schumer amendment, would clearly discourage the parties from considering whether that case should be settled. It seems to me that our public policy ought to be encouraging settlements, not discouraging settlements.

Judge Higginbotham, from the fifth circuit, testified on the Senate side as the chairman of the Advisory Committee on the Federal Rules of Practice and Procedure. He testified that his advisory committee had studied this particular idea and had found that no change was needed to the basic approach to the issuance and the use of protective orders.

In particular he stated that the results of these studies had shown that there was no need for these provisions and that they would create more burdensome and costly discovery as well as greater burdens on the court system.

Mr. Chairman, this amendment makes a mockery of our system of justice by allowing third-party special interests unlimited access to private corporate documents.

The gentleman previously had stated that one of the States that he pointed out that had changed the rules was Florida. In Florida, a trial lawyer recently testified that it has resulted in negative and confusing experiences that have discouraged out-of-court settlements.

I would suggest that the reason why 39 out of 41 State legislatures have rejected the type of change that the gentleman from New York would ask for is precisely because it would discourage the ability of companies and people involved in a lawsuit, to encourage them to come to a conclusion and to settle out of court.

I would think the gentleman from New York would want to have these kinds of settlements and not discourage those kind of settlements out of court and having to go to a trial and use up a lot of the resources of the court.

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

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

Mr. SCHUMER. I thank the gentleman for his courtesy in yielding.

Does the gentleman not think that if these records were opened, particularly in some of the egregious cases, it would actually reduce litigation because you would not have to go through the same discovery and the same process over and over and over again?

First it would reduce it in that people would not use the product, but second, once they did, it would greatly shorten whatever kind of trial time we would need. Why go over it 100 times?

The only other point I would make to the gentleman is that we are not opening all records. We are just changing the burden of proof when the health and safety, in effect changing the burden of proof when the health or safety of someone is at stake.

I await, I am sure, the gentleman's thoughtful and carefully considered answer.

Mr. OXLEY. Let me just simply respond by saying that Judge Higginbotham's advisory committee that did a serious study on exactly what the gentleman from New York would try to do came to the very solid conclusion as he testified in the other body that it would have a deleterious effect on the litigation system and it would in fact discourage out-of-court settlements. This is somebody who has studied the issue, who has been a Federal judge, a well-regarded Federal judge, and I think that we ought to take his advice very carefully, as well as the 39 out of the 41 States that have essentially rejected the gentleman from New York's recommendations.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCHUMER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

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

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 184, noes 243, not voting 7, as follows:

[Roll No. 220]

AYES—184

Abercrombie	Gejdenson	Oberstar
Ackerman	Gephardt	Obey
Baldacci	Gibbons	Olver
Barcia	Gonzalez	Ortiz
Barrett (WI)	Gordon	Owens
Becerra	Graham	Pallone
Beilenson	Green	Pastor
Bentsen	Gutierrez	Payne (NJ)
Berman	Hall (OH)	Payne (VA)
Bevill	Hamilton	Pelosi
Bishop	Harman	Peterson (FL)
Bonior	Hastings (FL)	Pomeroy
Borski	Hayes	Poshard
Boucher	Hefner	Rahall
Brewster	Hilliard	Reed
Browder	Hinchey	Reynolds
Brown (CA)	Holden	Richardson
Brown (FL)	Hoyer	Rivers
Brown (OH)	Jackson-Lee	Rose
Bryant (TX)	Jacobs	Roybal-Allard
Bunn	Jefferson	Rush
Cardin	Johnson (SD)	Sabo
Chapman	Johnson, E.B.	Sanders
Clayton	Johnston	Sawyer
Clement	Kanjorski	Schroeder
Clyburn	Kaptur	Schumer
Coleman	Kennedy (MA)	Scott
Collins (IL)	Kennedy (RI)	Serrano
Collins (MI)	Kennelly	Skaggs
Conyers	Kildee	Skelton
Costello	Kleczka	Slaughter
Coyne	Klink	Spratt
Cramer	Klug	Stark
Danner	LaFalce	Stokes
de la Garza	Lantos	Studds
DeFazio	Lewis (GA)	Stupak
DeLauro	Lipinski	Tejeda
Dellums	Lofgren	Thompson
Deutsch	Luther	Thornton
Dicks	Maloney	Thurman
Dixon	Manton	Torres
Doggett	Markey	Torricelli
Dooley	Martinez	Towns
Doyle	Mascara	Traficant
Duncan	Matsui	Tucker
Durbin	McCarthy	Velazquez
Edwards	McDermott	Vento
Engel	McHale	Visclosky
Eshoo	McNulty	Volkmer
Evans	Meehan	Ward
Farr	Meek	Waters
Fattah	Menendez	Watt (NC)
Fazio	Mfume	Waxman
Fields (LA)	Miller (CA)	Williams
Filner	Mineta	Wilson
Flake	Minge	Wise
Foglietta	Mink	Woolsey
Ford	Moakley	Wyden
Fox	Moran	Wynn
Frank (MA)	Murtha	Yates
Frost	Nadler	
Furse	Neal	

NOES—243

Allard	Buyer	Dingell
Archer	Callahan	Doolittle
Armey	Calvert	Dornan
Bachus	Camp	Dreier
Baesler	Canady	Dunn
Baker (CA)	Castle	Ehlers
Baker (LA)	Chabot	Ehrlich
Ballenger	Chambliss	Emerson
Barr	Christensen	English
Barrett (NE)	Chrysler	Ensign
Bartlett	Clinger	Everett
Barton	Coble	Ewing
Bass	Coburn	Fawell
Bateman	Collins (GA)	Fields (TX)
Bereuter	Combest	Flanagan
Bilbray	Condit	Foley
Bilirakis	Cooley	Forbes
Bliley	Cox	Fowler
Blute	Crane	Franks (CT)
Boehlert	Crapo	Franks (NJ)
Boehner	Cremeans	Frelinghuysen
Bonilla	Cubin	Frisa
Bono	Cunningham	Funderburk
Brownback	Davis	Gallegly
Bryant (TN)	Deal	Ganske
Bunning	DeLay	Gekas
Burr	Diaz-Balart	Geren
Burton	Dickey	Gilchrest

Gillmor	Longley	Salmon
Gilman	Lucas	Sanford
Goodlatte	Manzullo	Saxton
Goodling	Martini	Scarborough
Goss	McCollum	Schaefer
Greenwood	McCrery	Schiff
Gunderson	McDade	Seastrand
Gutknecht	McHugh	Sensenbrenner
Hall (TX)	McInnis	Shadegg
Hancock	McIntosh	Shaw
Hansen	McKeon	Shays
Hastert	Metcalf	Shuster
Hastings (WA)	Meyers	Sisisky
Hayworth	Mica	Skeen
Hefley	Miller (FL)	Smith (MI)
Heineman	Molinari	Smith (NJ)
Herger	Mollohan	Smith (TX)
Hilleary	Montgomery	Smith (WA)
Hobson	Moorhead	Solomon
Hoekstra	Morella	Souder
Hoke	Myers	Spence
Horn	Myrick	Stearns
Hostettler	Nethercutt	Stenholm
Houghton	Neumann	Stockman
Hunter	Ney	Stump
Hutchinson	Norwood	Talent
Hyde	Nussle	Tanner
Inglis	Orton	Tate
Istook	Oxley	Tauzin
Johnson (CT)	Packard	Taylor (MS)
Johnson, Sam	Parker	Taylor (NC)
Jones	Paxon	Thomas
Kasich	Peterson (MN)	Thornberry
Kelly	Petri	Tiahrt
Kim	Pickett	Torkildsen
King	Pombo	Upton
Kingston	Porter	Vucanovich
Knollenberg	Portman	Waldholtz
Kolbe	Pryce	Walker
LaHood	Quillen	Walsh
Largent	Quinn	Wamp
Latham	Radanovich	Watts (OK)
LaTourette	Ramstad	Weldon (FL)
Laughlin	Regula	Weldon (PA)
Lazio	Riggs	Weller
Leach	Roberts	White
Levin	Roemer	Whitfield
Lewis (CA)	Rogers	Wicker
Lewis (KY)	Rohrabacher	Wolf
Lightfoot	Ros-Lehtinen	Young (AK)
Lincoln	Roth	Young (FL)
Linder	Roukema	Zeliff
Livingston	Royce	Zimmer

NOT VOTING—7

Andrews	LoBiondo	Rangel
Chenoweth	Lowey	
Clay	McKinney	

□ 1428

Mr. BARTLETT of Maryland changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. LOWEY. Mr. Chairman, I unavoidably missed rollcall vote No. 220. Had I been there, I would have voted "aye."

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. CONYERS

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CONYERS: Page 13, redesignate section 110 as section 111, and insert after line 2 the following:

SEC. 110. FOREIGN PRODUCTS.

(a) GENERAL RULE.—In any product liability action for injury that was sustained in the United States and that relates to the purchase or use of a product manufactured outside the United States by a foreign manufacturer, the Federal court in which such action is brought shall have jurisdiction over such manufacturer if the manufacturer knew or reasonably should have known that the product would be imported for sale or use in the United States.

(b) ADMISSION.—If in any product liability action a foreign manufacturer of the product involved in such action fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in such action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) PROCESS.—Process in an action described in subsection (a) may be served wherever the foreign manufacturer is located, has an agent, or transacts business.

The CHAIRMAN. Pursuant to the rule, the gentleman from Michigan [Mr. CONYERS] and a member opposed will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Michigan [Mr. CONYERS].

□ 1430

Mr. CONYERS. Mr. Chairman, this is a very important amendment. I apologize for having such little time.

This amendment makes sure that foreign manufacturers comply with the U.S. Court rules if they choose to have their goods sold in this country, and that includes discovery, which is one of the most important parts of court rules, if there is a lawsuit against a foreign manufacturer.

Our hearings revealed that many times our liability laws are of little use against foreign companies because it is so difficult to obtain jurisdiction over them and obtain discovery of the documents necessary to establish legal liability. And that is why within my 5 minutes I have asked the former chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], and the gentleman from Illinois [Mr. DURBIN] to share this time with me.

Mr. Chairman, I think my amendment will make sure that foreign firms can be brought to justice in this country just as American companies can be.

Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I thank the gentleman for yielding this time to me.

Mr. Chairman, this is a fair amendment. It treats American corporations and foreign corporations in American courts exactly the same way. If you are interested in fairness, this is an amendment to vote for because it says foreign corporations must make the same disclosures in American courts under discovery process that must be made by American corporations.

If you are interested in competitiveness, this is an amendment on which you should vote. The argument for this legislation is that it is going to contribute to competitiveness. Well, if it is going to do so, it should do it fairly and completely. This says that foreigners do not get a greater advantage in dealing with American courts and American litigants than the foreign corporation. It says they have got to make the same discovery. Discovery is absolutely essential to the judicial process. Without fair discovery, there can be no fair judicial process, and without discovery in product liability suits, there can clearly be no discovery.

Without this amendment, what the bill will say is American corporations in court on product liability suits involving perhaps the same matter that might be involved with the litigation by a foreign corporation, have to disclose their whole case, but foreign corporations do not.

If you want American corporations to be competitive in a market in which foreigners sell better than $500 billion worth of goods, my suggestion is that you should then vote for this amendment. It is fair, it protects American corporations, it contributes to competitiveness, and it is in the interest of the United States.

Vote for the Conyers amendment.

The CHAIRMAN. The Chair inquires, is there a Member who wishes to manage time in opposition to the amendment?

Mr. HYDE. I do, Mr. Chairman.

The CHAIRMAN. The distinguished gentleman from Illinois [Mr. HYDE], chairman on the Committee of the Judiciary, is recognized for 5 minutes.

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

Mr. Chairman, I oppose the amendment offered by the gentleman from Michigan because it raises significant constitutional and international law questions, represents a serious potential irritant in our bilateral relations with other countries, and raises the specter of foreign retaliation against American firms. For the United States to take unilateral action that is likely to be perceived as overbearing in character and constituting an affront to other nations is shortsighted and counterproductive.

The due process clause of the fifth amendment and principles of international law are implicated when we purport to confer jurisdiction on a U.S. court over a foreign manufacturer based merely on the fact that the manufacturer knew or reasonably should have known that the product would be imported into the United States. The criteria for U.S. jurisdiction in the amendment would even embrace situations where a manufacturer might not want its product imported into this country but knew or reasonably should have known that that eventuality would materialize in spite of its wishes.

The extent to which American statutes apply to foreign nationals already is a point of contention in our relations with other countries. Prudence dictates that we proceed cautiously in

this arena rather than act precipitously without adequate consideration. Although the author of this amendment offered another amendment in the Committee on the Judiciary markup relating to service of process on a foreign manufacturer, our committee did not have the opportunity to give any consideration to the proposal now presented to this body.

There are internationally recognized procedures for Americans, litigating matters in the United States, to obtain relevant information or material from foreign countries. These procedures involve going initially to an American court—with the discovery request eventually being presented to the appropriate foreign court.

Many countries react negatively to U.S. discovery procedures—and efforts to give extraterritorial effect to discovery orders of U.S. courts, by deeming failure to comply as an admission, fail to show appropriate deference to the sensibilities and prerogatives of other countries. Our own discovery practices have been subject to severe criticism even within the United States—and efforts to export them in circumvention of the courts of a foreign country are unjustified. The extent to which failure to furnish material is deemed an admission under proposed section 110(b) is overbroad, in any event, because the admission embraces any fact with respect to which the discovery order relates even though the testimony, document, or other thing that is sought may turn out to be irrelevant.

The potential for foreign retaliation cannot be overlooked when we contemplate the possibility of foreign countries taking the position that American firms must respond in foreign courts—under foreign law—when the particular product is sold or used there.

The new proposed section also raises significant interpretive problems when we try to give content to the term "foreign manufacturer." U.S. manufacturers, for example, often have affiliates in other countries that manufacture component parts. The ambiguity of the reference to foreign manufacturer in proposed section 110 undoubtedly would precipitate much litigation.

It makes much more sense, in my judgment, to place primary emphasis in resolving this type of issue on international conventions and bilateral agreements. This body is not in a position today to contribute in a helpful way to addressing this subject.

I urge the defeat of the amendment.

Mr. CONYERS. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, what we just heard explained as the reason for opposing this amendment is absolutely astonishing. We are saying we should not subject a foreign manufacturer to our legal process because of free trade considerations. Now, ladies and gentlemen, if we are prepared to say that they should have a more lenient way in our courts than our own manufacturers, I will be astounded to hear such a statement.

Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. I thank the gentleman for yielding this time to me.

Mr. Chairman, the position taken by the Republicans in opposition to the Conyers amendment is going to give free trade a bad name. If foreign corporations want to sell their products to Americans in America, they should be subject to our laws.

Consider this possibility: There is a collision in my hometown of Springfield between a car made in Detroit and one made in Tokyo. People are severely injured. There is a suspicion that one of these cars had some type of defect in its brakes, for example, but we are not sure which one. So the person who is injured goes to court and sues both the American car company and the Japanese car company. Guess what? You can discover all the documents in the world from the American car company to find out whether you have a claim. But as soon as you try to get the Japanese car makers to supply this information, they say, as the gentleman from Illinois [Mr. HYDE] said, "No, no, no, it is a matter of international treaty. You can't find this out. You have to go to Tokyo."

We bought the car in Springfield, but you have to go to Tokyo for discovery. Let me tell you what we are talking about here is concealment and evasion. If my colleagues want to get up here, wave their American flags, and vote "Buy American" day in and day out, for goodness sakes, take a look at what this amendment says. If foreign corporations want to sell products to American consumers, why in the world should they not comply with American law?

The CHAIRMAN. In order to close debate, the gentleman from Illinois [Mr. HYDE] is recognized for 1 minute.

Mr. HYDE. Mr. Chairman, this amendment is unfair, it violates due process by allowing suits against corporations that "should have known" their products would be sold in the United States. It violates the fundamental principles of fairness, and it subjects corporations to suits that might never have intended to do business over here.

I know the distinguished gentleman from Illinois [Mr. DURBIN] who just spoke is familiar with the Hague Convention on the taking of evidence abroad. He would not intentionally want to violate those rules of discovery of foreign corporations which already exist. The amendment is unnecessary. It casts too large a net. We are subject to retaliation. There is no definition of a foreign manufacturer.

There are just so many things wrong with this that I urge a "no" vote.

The CHAIRMAN. All time has expired on this amendment.

The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 258, noes 166, not voting 10, as follows:

[Roll No. 221]

AYES—258

Abercrombie	Evans	Martinez
Ackerman	Farr	Mascara
Allard	Fattah	Matsui
Andrews	Fazio	McCarthy
Bachus	Fields (LA)	McDade
Baesler	Filner	McDermott
Baldacci	Foglietta	McHale
Barcia	Forbes	McInnis
Barrett (WI)	Ford	McIntosh
Bateman	Fowler	McKinney
Becerra	Fox	McNulty
Beilenson	Frank (MA)	Meehan
Bentsen	Frost	Meek
Bereuter	Furse	Menendez
Berman	Gallegly	Metcalf
Bevill	Gejdenson	Meyers
Bishop	Gephardt	Mfume
Blute	Geren	Miller (CA)
Boehlert	Gibbons	Mineta
Bonior	Gillmor	Minge
Borski	Gilman	Mink
Boucher	Gonzalez	Moakley
Brewster	Gordon	Mollohan
Browder	Graham	Montgomery
Brown (CA)	Green	Murtha
Brown (FL)	Gunderson	Nadler
Brown (OH)	Gutierrez	Neal
Brownback	Hall (OH)	Ney
Bryant (TX)	Hamilton	Oberstar
Bunn	Harman	Obey
Cardin	Hastings (FL)	Olver
Chambliss	Hayes	Ortiz
Chapman	Hayworth	Orton
Chenoweth	Hefley	Owens
Clay	Hefner	Pallone
Clayton	Hinchey	Parker
Clement	Hobson	Pastor
Clinger	Holden	Payne (NJ)
Clyburn	Horn	Payne (VA)
Coleman	Hostettler	Pelosi
Collins (IL)	Hoyer	Peterson (FL)
Collins (MI)	Hunter	Peterson (MN)
Condit	Jackson-Lee	Petri
Conyers	Jacobs	Pickett
Cooley	Jefferson	Pombo
Costello	Johnson (SD)	Pomeroy
Coyne	Johnson, E. B.	Poshard
Cramer	Johnston	Pryce
Crapo	Jones	Rahall
Danner	Kanjorski	Ramstad
de la Garza	Kaptur	Reed
Deal	Kennedy (MA)	Regula
DeFazio	Kennedy (RI)	Reynolds
Dellums	Kildee	Richardson
Deutsch	Kleczka	Riggs
Diaz-Balart	Klink	Rivers
Dicks	LaFalce	Roberts
Dingell	Lantos	Roemer
Dixon	Laughlin	Rohrabacher
Doggett	Levin	Rose
Dooley	Lewis (GA)	Roth
Doolittle	Lincoln	Roukema
Doyle	Lipinski	Roybal-Allard
Duncan	Lofgren	Royce
Durbin	Longley	Rush
Edwards	Lowey	Sabo
Emerson	Luther	Sanders
Engel	Maloney	Sawyer
Ensign	Manton	Scarborough
Eshoo	Markey	Schiff

Schroeder	Stupak	Volkmer
Schumer	Tanner	Walsh
Scott	Tate	Wamp
Serrano	Tauzin	Ward
Shuster	Taylor (MS)	Waters
Sisisky	Tejeda	Watt (NC)
Skaggs	Thompson	Waxman
Skelton	Thornton	Weldon (PA)
Slaughter	Thurman	Williams
Smith (MI)	Torres	Wilson
Spratt	Torricelli	Wise
Stark	Traficant	Wolf
Stearns	Tucker	Woolsey
Stenholm	Velazquez	Wyden
Stokes	Vento	Wynn
Studds	Visclosky	Yates

NOES—166

Archer	Funderburk	Myers
Armey	Ganske	Myrick
Baker (CA)	Gekas	Nethercutt
Ballenger	Gilchrest	Neumann
Barr	Goodlatte	Norwood
Barrett (NE)	Goodling	Nussle
Bartlett	Goss	Oxley
Barton	Greenwood	Packard
Bass	Gutknecht	Paxon
Bilbray	Hall (TX)	Porter
Bilirakis	Hancock	Portman
Bliley	Hansen	Quillen
Boehner	Hastert	Quinn
Bonilla	Hastings (WA)	Radanovich
Bono	Heineman	Rogers
Bryant (TN)	Herger	Ros-Lehtinen
Bunning	Hilleary	Salmon
Burr	Hoekstra	Sanford
Burton	Hoke	Saxton
Buyer	Hutchinson	Schaefer
Callahan	Hyde	Seastrand
Calvert	Inglis	Sensenbrenner
Camp	Istook	Shadegg
Canady	Johnson (CT)	Shaw
Castle	Johnson, Sam	Shays
Chabot	Kasich	Skeen
Christensen	Kelly	Smith (NJ)
Chrysler	Kim	Smith (TX)
Coble	King	Smith (WA)
Coburn	Kingston	Solomon
Collins (GA)	Klug	Souder
Combest	Knollenberg	Spence
Cox	Kolbe	Stockman
Crane	LaHood	Stump
Cremeans	Largent	Talent
Cubin	Latham	Taylor (NC)
Cunningham	LaTourette	Thomas
Davis	Lazio	Thornberry
DeLay	Leach	Tiahrt
Dickey	Lewis (CA)	Torkildsen
Dornan	Lewis (KY)	Upton
Dreier	Lightfoot	Vucanovich
Dunn	Linder	Waldholtz
Ehlers	Livingston	Walker
Ehrlich	Lucas	Watts (OK)
English	Manzullo	Weldon (FL)
Everett	Martini	Weller
Ewing	McCollum	White
Fawell	McCrery	Whitfield
Fields (TX)	McHugh	Wicker
Flanagan	McKeon	Young (AK)
Foley	Mica	Young (FL)
Franks (CT)	Miller (FL)	Zeliff
Franks (NJ)	Molinari	Zimmer
Frelinghuysen	Moorhead	
Frisa	Morella	

NOT VOTING—10

Baker (LA)	Houghton	Rangel
DeLauro	Kennelly	Towns
Flake	LoBiondo	
Hilliard	Moran	

□ 1504

Messrs. PAXON, COBLE, and CHRYSLER changed their vote from "aye" to "no."

Messrs. BLUTE, WAMP, JONES of North Carolina, CHAMBLISS, POMBO, GALLEGLY, ROTH, PETRI, HORN, HAYWORTH, RAMSTAD, RIGGS, ROHRABACHER, HOBSON, McINTOSH, ROYCE, BEREUTER, CRAPO, CLINGER, and BACHUS, Ms. PRYCE, Mrs. CHENOWETH, and Mrs. FOWLER changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. MORAN. Mr. Chairman, during rollcall vote No. 221 on H.R. 956 I was unavoidably detained. Had I been present I would have voted "aye."

The CHAIRMAN. It is now in order under the rule to consider amendment No. 6 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. WATT of North Carolina: Page 17, lines 16–17, strike "by clear and convincing evidence".

Page 20, lines 4–11, strike the section in its entirety and renumber the subsequent sections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from North Carolina [Mr. WATT] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, let me put this in perspective for my colleagues, because this started out to be a part of a three-amendment package. Unfortunately, two of the three amendments the Committee on Rules did not see fit to make in order. So I want to talk a minute about the other two amendments and put this in context.

No. 1, this bill clearly preempts State law insofar as substantive law is concerned on products liability and in the area of punitive damages. But the bill actually goes beyond that to preempt State law, procedural law, by not only telling the States what standard of proof will be required, but also what the burden of proof will be in their courts.

The bill then, after it has preempted both procedural and substantive State law, says you cannot have access to the Federal courts under any circumstances to do any of this, so in effect it mandates the State courts not only the substance of what they shall apply as law, but the procedure by which they must apply the substantive law.

In North Carolina, in punitive damages cases, the burden of proof is beyond a preponderance of the evidence. That is the standard you must meet to win a case in North Carolina and in most State courts. This bill takes the standard and raises it to a standard of clear and convincing evidence, and by doing so not only preempts the substantive law of the State, but also preempts the procedural law of the State.

For my colleagues who have any respect for States' rights, it is one thing to say we will tell you what law to apply. It is an entirely different thing to say to the States we will tell you how to apply that law and how much of the evidence will be required to win a case and how you should try the case.

My colleagues, what I am trying to do by striking this clear and convincing evidence standard which is in this bill is to protect the integrity of our law in North Carolina insofar as we can do so to make sure that we at least begin to maintain the integrity of our procedural laws in North Carolina, even if my colleagues will not respect the substantive law in North Carolina.

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

Mr. HYDE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman is recognized for 10 minutes.

Mr. HYDE. Mr. Chairman, I thank the chairman for yielding me this time.

The amendment offered by the gentleman from North Carolina would strike section 201 of the bill, the clear and convincing evidence standard in punitive damages cases. This is an intermediate burden of proof that is higher than preponderance of the evidence, the general rule in civil cases, and a lower standard than proof beyond a reasonable doubt, which is the burden in criminal cases. Because punitive damages are not designed to compensate injured parties, but rather to punish or to deter egregious conduct, a higher threshold than that required for establishing a right to compensation seems entirely appropriate. It is inconsistent with our concept of fairness to impose punishment in the form of punitive damages merely on the basis of showing a probability, perhaps a 51-percent likelihood.

The discussion of this subject in the American Law Institute Reporters' Study on Enterprise Responsibility for Personal Injury in 1991 has this to say:

In the case of punitive damages, the immediate victim's interests are not as important as society's need for optimal care, which includes avoiding overdeterrence and undue risk aversion by defendants to the detriment of people who need their goods and services. While the full-blown retributive rationale for punitive damages might suggest imposition of the criminal law standard of proof "beyond a reasonable doubt," what is at issue here is a civil monetary penalty against an organization, not the criminal condemnation and deprivation of liberty (or even life) of an individual. Consequently, we endorse the emerging consensus among legal scholars, practitioners, and state legislators in favor of an intermediate "clear and convincing evidence" burden of proof.

That is exactly what we have in this bill.

The report of the Special Committee on Punitive Damages of the American

Bar Association, its section on litigation, reached the same result. What they said in their report:

Because one of the purposes of punitive damages is punishment, the committee feels that it is important that persons who are not guilty of conduct warranting an award of punitive damages should not be punished. The value in ensuring that innocent defendants are not held liable for punitive damages overrides the effects of a small number of instances where guilty defendants might not be held liable. The committee concludes, therefore, that the "clear and convincing" burden of proof is appropriate for an award of punitive damages.

That is what we have in this legislation. If we allow punitive damage awards based on too loose an evidentiary standard, we risk punishing defendants unfairly, and exacerbate pressures to offer settlements in cases of tenuous liability. Consumers of goods and services often end up paying the cost of inappropriate awards of punitive damages. For these reasons, I believe the standard of clear and convincing evidence is fair and reasonable. It is not a mere preponderance; it is not beyond a reasonable doubt; it is right in the middle, clear, and convincing evidence. The American Bar Association, recommends it; the American Law Institute recommends it; and I recommend it.

Mr. Chairman, the amendment offered by the gentleman from North Carolina would strike from section 201 of the bill the "clear and convincing evidence" standard in punitive damages cases. This is an intermediate burden of proof that is a higher standard than "preponderance of the evidence," the general rule in civil cases, and a lower standard than "proof beyond a reasonable doubt," the burden in criminal cases.

Because punitive damages are not designed to compensate injured parties but rather punish or deter egregious conduct, a higher threshold than that required for establishing a right to compensation seems entirely appropriate. It is inconsistent with our concept of fairness to impose punishment, in the form punitive damages, merely on the basis of showing a probability—perhaps a 51-percent likelihood.

The discussion of this subject in the American Law Institute Reporters' Study on Enterprise Responsibility for Personal Injury [1991] is particularly pertinent:

[I]n the case of punitive damages, the immediate victim's interests are not as important as society's need for optimal care, which includes avoiding overdeterrence and undue risk aversion by defendants to the detriment of people who need their goods and services. While the full-blown retributive rationale for punitive damages might suggest imposition of the criminal law standard of proof "beyond a reasonable doubt," what is at issue here is a civil monetary penalty against an organization, not the criminal condemnation and deprivation of liberty (or even life) of an individual. Consequently, we endorse the emerging consensus among legal scholars, practitioners, and state legislators in favor of an intermediate "clear and convincing evidence" burden of proof.

The Report of the Special Committee on Punitive Damages of the American Bar Association Section of Litigation [1986] reached the same result. That report concludes:

Because one of the purposes of punitive damages in punishment, the committee feels that it is important that persons who are not guilty of conduct warranting an award of punitive damages should not be punished. The value in insuring that innocent defendants are not held liable for punitive damages overrides the effects of a small number of instances where guilty defendants might not be held liable. The committee concludes, therefore, that the "clear and convincing" burden of proof is appropriate for an award of punitive damages.

If we allow punitive damages awards based on too loose an evidentiary standard, we not only risk punishing defendants unfairly but also exacerbate pressures to offer settlements in cases of tenuous liability. Consumers of goods and services often end up paying the costs of inappropriate awards of punitive damages.

For all these reasons, I believe the standard of "clear and convincing evidence" is fair and reasonable. I urge the defeat of the pending amendment.

□ 1515

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

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

Mr. BERMAN. The gentleman makes a very good, well-documented case for the appropriateness of the clear and convincing standard.

Mr. HYDE. I thank the gentleman.

Mr. BERMAN. But what he has not said one word about is why we should be pushing our judgment onto a State in an area of which there is no Federal interest in deciding whether it wants a higher standard or a lower standard.

Mr. HYDE. Reclaiming my time, Mr. Chairman, there is a great interest in standardizing the elements of proof. We are trying to have a products liability and litigation standard that transcends the 50 boundaries, so as to not have 50 separate standards. It seems to me, when you get to the subject of punitive damages, which can affect the entire stream of commerce, it is beneficial to have a standard level of proof.

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

Mr. WATT of North Carolina. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I think we need to put this amendment and others into context, because this is not the only bill that we have passed regarding this subject. We have the loser pays bill that is designed to get rid of frivolous lawsuits, but it also has an impact on lawsuits like this.

If you had a case, for example, that you could win under the present law and this change comes about, you had a case that was previously a winner, now is a loser on the punitive damages. And if you failed to settle the case for what was offered and because of this higher standard, you come in a little bit under what was offered, you now have a frivolous lawsuit, in which case you have to pay both sides attorney's fees.

Mr. Chairman, there is a case in 1984 where a plaintiff presented evidence in a case involving bandages that had been contaminated and they had bought the bandages, the warehouse, they had already been notified about the contamination. The quality control advisor had told them that the bandages were contaminated. And they were used, sold anyway, and a person was injured. Damages totaled, medical damages of only $4,200. But if that case had not been settled, and they received punitive damages under the present law, if this amendment is not adopted and they lost the case because of the higher standard, that would now be a frivolous case and they could be in a situation where they are paying not only their attorney's fees but the other attorney's fees.

Mr. Chairman, I would hope that we would leave it up to the States, not change the standard and not turn the clock back on consumer protection, because the fact that these cases can be brought means that other consumers can have bandages that are not contaminated, because the companies have not had to pay the punitive damages.

Mr. Chairman, this is a very valuable amendment. I hope we leave it up to the States to decide what the standard ought to be.

Mr. HYDE. Mr. Chairman, would the Chair advise how much time I have left?

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] has 5 minutes remaining, and the gentleman from North Carolina [Mr. WATT] has 4 minutes remaining.

Mr. HYDE. Mr. Chairman, I yield myself 1 minute.

I just wish to say, we are talking about punitive damages, which can have a serious impact on the economy, on jobs. They can extend, and do extend, well beyond the borders of a State. The purpose of this legislation is to standardize, as much as possible, in a fair way, the elements of proof that impact on our economy. If we want to have 50 patchwork sets of laws to deal with the economy and deal with products liability, why, I suppose we can. But the purpose of this legislation is to assist manufacturers, to give some certitude, some predictability, to do away with lawsuit abuse, forum shopping. Therefore, I must resist the gentleman's amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1½ minutes to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Chairman, I rise in support of the Watt amendment. The

bill before us would take certain legal standards in a direction that is inconsistent with our system of justice. First, under the bill, the burden of proof in awarding punitive damages would be imposed by the Federal Government, thereby preempting the States from regulating this area. And, second, the bill imposes an awkward standard of proof in civil litigation that would make it unusually and unfairly difficult for victims to recover.

The Watt amendment corrects these imperfections.

The bill establishes a standard of "clear and convincing" evidence as the burden of proof for the award of punitive damages. A victim would have to show that the defendant, first, specifically intended to cause harm and, second, manifested a conscious, flagrant indifference to the safety of others.

These new requirements would totally change the punitive damages burden of proof in each of the 50 States. It has been my understanding, Mr. Chairman, that the majority has been pressing to return power to the States, not to take it away. The bill language takes power from the States and imposes a federally created standard.

More importantly, however, the bill creates a new standard in civil litigation. Currently, the standard is "preponderance of the evidence." Apparently, under the bill, the preponderance standard would apply in the case in the main, but the "clear and convincing" standard would apply in assessing punitive damages. That is an awkward way to proceed and, in my view an unfair and unequitable way to proceed.

If you support the rights of States, and if you support a level playing field among litigants, support the Watt amendment.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. HOKE], a member of the committee.

Mr. HOKE. Mr. Chairman, I think we have forgotten again what the basis is of punitive damages. Punitive damages comes from the doctrine of punishment which is really a quasi-criminal remedy. It is not strictly a civil remedy. That is the whole purpose of raising the standard of proof.

As we all know, lawyers on this committee know that the standard of proof, when it comes to proving a crime, is one of "beyond a reasonable doubt." And when you are merely proving a civil case, it is the "preponderance of the evidence." Well, "clear and convincing" is in between.

We are not talking about compensation here. We are talking about punishment. If we are going to go to a standard of proof that is going to mete out punishment, then we should require that that standard of proof be higher than the normal standard of proof that you find in a civil case.

While you can talk about States' rights or you can make other arguments until your heart is content, the fact is that what is really going on here is the need to have a standard of proof which meets the remedy. And the remedy is punitive, punishing—punishing the wrongdoer—if we are going to go to that point, after having compensated the victim for either his or her personal injuries or for property damages, to have a higher standard of proof. Otherwise, it is simply not fair and it is a way of using the civil justice system as a substitute for the criminal justice system in a way that is completely unintended, never was intended by our justice system and simply will not work.

Finally, it will undermine the confidence of the public in a system when they cannot predict what the outcomes are going to be, when they do not know what is going to happen and when they know that it is easier to get a punitive damage award for punishment at the civil bar than it is to actually convict someone of a crime at the criminal bar.

For all those reasons, I very strongly urge that we defeat this amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I listened to the gentleman from Ohio and I finally got it. New Jersey has a law that provides punitive damages uncapped for suits against sexual predators. They have a standard of "preponderance of the evidence."

How can we allow 50 different States to have 50 different standards against sexual predators? Sexual predators should know what the uniform, nationwide, 50-State standard is for punitive damages. This is a punitive kind of a thing. We have to protect these people against actions against them. Stream of commerce? Come on. Give me a break.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Chairman, at the same time last year I sat on the highest State court in the State of Texas, struggling with this very issue. Our court looked at what the standard should be on the question of punitive damages. It looked at "clear and convincing evidence." It looked at burden by "a preponderance." It looked beyond "a reasonable doubt," and it chose not to pursue this standard.

Other States have chosen to pursue the "clear and convincing" standard. There are some good arguments for it. But the one thing that is clear and very convincing about this debate is that our States are being denied that right and that people that come here praising the 10th amendment are shredding it in the course of this debate and are saying that State jurists and legal scholars and State legislators around this country shall not have the right to set the standard that will apply to their citizens.

So much of this debate is built on the theory that we not only need trickle-down economics, that what we need is trickle-down government and that it ought to trickle down from Washington instead of gushing up from the people and their State and local leaders.

I reject that, as this amendment does.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentleman from North Carolina [Mr. WATT] is recognized for 1 minute.

Mr. WATT of North Carolina. Mr. Chairman, it is clear that this is not about what the appropriate standard should be for burden of proof for punitive damages. The issue is not what that appropriate standard should be. The issue is, who ought to be setting that standard? If Members believe that the States have a place in our federation, which is what I have heard over and over and over again, I submit to my colleagues that the States ought to be determining for themselves what their own burdens of proof are and that we ought not at this level, at the Federal level, to be telling them that.

Regardless of whether we think it ought to be one thing or the other, higher or lower, the States have the right to make this decision, not my colleagues here in this body.

Mr. HYDE. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

The CHAIRMAN. The gentleman from Wisconsin [Mr. SENSENBRENNER] is recognized for 2 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I am shocked at listening to the argument from the gentleman from North Carolina [Mr. WATT] and the gentleman from Texas [Mr. DOGGETT]. That was the same argument that was used 30 years ago in this Chamber by those who were opposed to the civil rights legislation that revolutionized our society.

This Congress, 30 years ago used the commerce clause for passing the Civil Rights Act of 1964, one which opened up public accommodations, lunch counters, mom and pop cafes, local city buses to people of all races without discrimination. And that is one of the things that this Congress can take pride in doing.

What we are proposing to do here is to use the commerce clause for something that is just as much interstate commerce as the civil rights legislation. And that is to try to have a uniform standard throughout the country on punitive damages so that there will not be forum shopping in a State that has a lower standard on what has to be proven in order to get punitive damages.

There are a number of States that have adopted the clear and convincing standard, including California, and Colorado has adopted the beyond a reasonable doubt standard for punitive damages.

What will happen in the States that have adopted a higher standard than preponderance of the evidence is that those manufacturers will end up paying much higher product liability insurance premiums even though the people in that State will not be able to enjoy what they are paying for.

□ 1530

Consequently, you are going to be seeing people in California, which has passed a clear and convincing evidence standard, through their higher consumer prices, benefiting the people in the other States that have not. This issue should be federalized, and the amendment should be defeated.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This is a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 150, noes 278, not voting 6, as follows:

[Roll No. 222]

AYES—150

Abercrombie
Ackerman
Andrews
Baldacci
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Chapman
Clay
Clayton
Clyburn
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
Deal
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Frost
Furse
Gejdenson
Gephardt
Gibbons
Green
Gutierrez
Harman
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Holden
Hoyer
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Maloney
Manton
Markey
Mascara
Matsui
McCarthy
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Minge
Mink
Moran
Nadler
Oberstar
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Traficant
Tucker
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wise
Woolsey
Wyden
Wynn
Yates

NOES—278

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Borski
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Danner
Davis
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Hunter
Hutchinson
Hyde
Inglis
Istook
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kaptur
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
Longley
Lucas
Luther
Manzullo
Martinez
Martini
McCollum
McCrery
McDade
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Oxley
Packard
Parker
Paxon
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—6

Cubin
Graham
Hall (OH)
Houghton
LoBiondo
Rangel

□ 1548

The clerk announced the following pairs:

On this vote:

Mr. Rangel for, with Mrs. Cubin against.

Mr. POMEROY changed his vote from "aye" to "no."

Mr. FOGLIETTA changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. LOBIONDO. Mr. Chairman, I was granted a leave of absence through 4 o'clock this afternoon. I would like the RECORD to reflect that had I been present I would have voted "Yes" on rollcall No. 217, "Yes" on rollcall No. 218, "No" on rollcall No. 219, "No" on rollcall No. 220, "Yes" on rollcall No. 221, and "No" on rollcall No. 222.

The CHAIRMAN. It is now in order under the rule to consider amendment No. 7 printed in House Report 104–72.

AMENDMENT OFFERED BY MS. FURSE

Ms. FURSE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Ms. FURSE: Page 17, strike line 22 and all that follows through line 2 on page 18 and redesigate the succeeding subsections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentlewoman from Oregon [Ms. FURSE] and a Member opposed will each be recognized for 15 minutes.

The Chair recognizes the gentlewoman from Oregon [Ms. FURSE].

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

Mr. Chairman, my amendment lifts this bill's caps on punitive damages because the cap in this bill discriminates against women, children, retirees, and low-wage workers. My amendment does not change the high standards of proof needed to get punitive damages.

What are punitive damages? They are damages the court sets as a punishment for conscious, flagrant indifference to the safety of others. In the few cases where they have been awarded, just 15 nationwide in 1994, they have proved to be effective. They have caused important changes in articles that people use or come in contact with, and these changes have saved lives.

This Republican bill for the very first time ties punitive damages to economic damages in such a way that it

discriminates because it sets these punitive damages in such a way that injuring a rich person is punished more heavily than injuring a poor person. I ask Members, is that fair? Is that the American way of justice?

Under the Republican bill, the punishment of a conscious indifference to the safety of a person whose economic damages were $1 million could be capped at $3 million. Yet the punishment for the same conscious, flagrant indifference to the safety of a person whose economic damages were only $10,000 would be capped at $250,000.

Why? Why would we do that? I want to remind my colleagues that women, children, retired persons, people who earn less money than others would all have far smaller economic damages than a person who makes a great deal of money, $1 million a year, say.

I am in favor of some cap on punitive damages, but not a cap that discriminates against women and children and low-wage workers.

My amendment is simply a fair amendment. It believes that when we punish people for their flagrant disregard for the safety of the people who use a product that they will be punished fairly. I ask a "yes" vote on the Furse-Mink amendment.

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

Mr. HYDE. Mr. Chairman, I rise in opposition to the Furse amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] will be recognized for 15 minutes to manage the opposition to the Furse amendment.

Mr. HYDE. Mr. Chairman, this amendment eliminates one of the most important features of this bill: the cap on punitive damages. Under section 201(b), a punitive damages award cannot exceed three times the award for economic loss, or $250,000, whichever is greater. Without a cap on punitive damages, our ability to compete in international markets is compromised, the settlement value of cases is inflated, consumers pay higher prices, and defendants face risks out of proportion to injuries sustained.

U.S. competitiveness is compromised because many countries of the world do not recognize the concept of punitive damages at all. We, in the United States, allow virtually unlimited punitive damages. The settlement value of cases is greatly inflated because defendants feel pressure to settle cases with very tenuous liability rather than face the possibility of high punitive damages awards. American consumers pay higher prices because American businesses, from manufacturers to service providers, factor their punitive damages exposure into their costs.

Punitive damages are not designed to compensate for losses. They are designed to punish wrongdoers, not compensate victims. The provisions in H.R. 956 do not affect, in any way, a victim's full recovery of complete economic damages, such as medical costs and lost wages, or noneconomic damages, such as for pain and suffering and emotional distress.

Even, would you believe, the Washington Post editorial staff supports punitive damages reform. Just last Wednesday they wrote that punitive damages reform is "long overdue, guidelines and limits must be set."

Due process must limit States' authority to impose punitive damages. In a recent case, Pacific Mutual Life Insurance versus Haslip, the U.S. Supreme Court held that the due process clause limits the ability of States to impose punitive damages. The Court expressed concern about punitive damages, which have run wild, and made it clear that this was an area calling for reasonable and rational reform.

Punitive damages impede quick settlements. Under today's system, punitive damages vary so greatly and are so uncertain they get in the way of quick settlements.

These damages are a total wild card in today's lawsuits. Because under the current system, no one has any idea of what a final punitive damage verdict might be, both sides find it difficult to reach the agreement necessary for speedy resolution.

I urge a "no" vote on the Furse amendment which removes from the bill the reasonable limits on punitive damage awards.

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

Ms. FURSE. Mr. Chairman, I yield 5½ minutes to the gentlewoman from Hawaii [Mrs. MINK].

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentlewoman for yielding me time.

I am very proud to rise in support of the Furst amendment which I also submitted to the Committee on Rules for consideration. Under our system of justice, individuals who are injured have the absolute right to go to court to seek compensation for damages that they have suffered. This is a basic right under our American system of law and it is a right that has to be defended, and that is why the gentlewoman from Oregon [Ms. FURSE] and I are here today, defending the basic fundamental right of all Americans to have the same equal provisions of justice applied to all of us irrespective of whether we work or do not work, whether we are men or women, poor or rich, young or old. The system of justice has to be equal. This section that we are seeking to strike from the bill is an absolute discriminatory provision which goes against women who are homemakers or women who are low-wage earners, children, elderly, and the poor in our society.

I find it very difficult to understand why this provision was added to the bill except perhaps it helps insurance companies. Because as I understand the majority party and those that I have worked with over the years, they are champions, absolute champions of individual rights. Besides that, they belabor the point that they do not want interference from the Federal Government of the rights and prerogatives of State governments. This is exactly what we are trying to strike out of the bill, an absolute invasion on the prerogatives of the State to decide how they want to apply this concept of punitive damages under State law.

I believe that punitive damages are appropriate and that the State statutes ought to govern how they are to be applied. States have enacted them. They have worked under punitive laws setting up standards and whatever. I do not understand where the justification is for now coming in and overturning all of these State statutes. In fact, when you look at the records of the number of punitive awards that have been made in the last 25 years, there have been only 355 such punitive damage awards. Half of them have been either reduced or overturned. So where is this overwhelming necessity to supplant the State laws with now the wisdom of the Congress of the United States? I submit that the case has not been made for such intervention.

□ 1600

The courts ought to be allowed to determine whether punitive damages ought to be leveled and what the damages should be dependent on the egregiousness of the injuries sustained by the victims. There should be no limits and if there has to be one, certainly it has to be nondiscriminatory.

Limits that are discriminatory should be banned under any concept of equal justice in America. Where people are allowed to receive more damages, punitive damages because of their economic status, because they are a CEO or they are a rich attorney, is simply not fair. The economic standing of the individual who has gone to court and supported the concept of punitive damages and won that concept by the court should not have those damages limited because they are poor, because they do not work, because they are children, because they are women or because they are retired. Unfortunately this bill sets a punitive damage cap which is unfair and only allows the rich to have the kind of award as indicated here in the chart.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Mrs. MINK of Hawaii. I yield to the gentleman from Texas.

Mr. DOGGETT. A couple of questions that the gentlewoman's comments have raised. The first one is I believe every Member has received today a package of old fashioned Girl Scout cookies. Does the gentlewoman have any understanding of why these special

interests keep hiding behind the skirts of the Little League and outfits like the Girl Scouts instead of fighting their own battles?

Mrs. MINK of Hawaii. I think it is basically because they cannot stand up on their two feet and defend what they are doing to the women and children of this country, so they are using mischievous allegations that the Girl Scouts support this.

Mr. DOGGETT. Will the gentlewoman yield for another question?

Mrs. MINK of Hawaii. Yes, I yield to the gentleman from Texas.

Mr. DOGGETT. If the young women who are pictured on this box of Girl Scout cookies, if they get injured and they are scarred or maimed for life, will they get less unless the amendment is adopted than the corporate lobbyists who sent these boxes of cookies to every Member?

Mrs. MINK of Hawaii. Unless they can prove economic damages, which children cannot do, they will get nothing, no matter how egregious the injury and suffering of the children, and I urge this amendment be adopted.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from Ohio [Mr. HOKE], a member of the committee.

Mr. HOKE. Mr. Chairman, we have heard repeatedly over the past several days of debate that there have been only 350 cases in all of American history that have resulted in the assessment of punitive damages and we have just heard that in fact this movement to try to put some sort of cap on punitive damages is being brought by special interests. But what we are not hearing about from the other side is the biggest special interest of all in the U.S. Congress, and that is the special interest of the trial lawyers. Two million dollars was spent by the trial lawyers in the 1993-94 cycle supporting Democratic candidates.

Let us look at the truth about this outrageous claim there have only been 350 cases in all of American history resulting in the assessment of punitive damages. That is complete hogwash and they know it is hogwash. They know there is no central list of punitive damages nationwide and they can pay for studies that will say whatever the lawyers want to say.

The case the trial lawyers mentioned represents a fraction of the type of cases in which punitive damages have been recovered. In just the last 4 years in the State of California alone there have been 253 jury verdicts in punitive damages cases to the tune of $1.6 billion, and in the past 2 years in four other States there have been 158 punitive damages alone. That is all punitive damage awards in just five States since 1990.

In order to understand the rationale for capping punitive damages we have to first look at the doctrine that underlines punitive damages themselves. Punitive damages are meant to be punishment for wrongdoing, the civil analog to a criminal fine. As we all know they are in addition to compensatory damages, those are the damages that are meant to compensate the victim for personal injury or damage to property. Punitive damages are a civil remedy that in many ways take on the qualities of a criminal remedy, and it is where the civil and the criminal law intersect.

This is why there is a fundamental problem with not having some outer limit on what the jury can render as punitive damages.

In order for our system of justice to inspire confidence in the public, it has to be meted out in a dispassionate and evenhanded and fairminded way which is consistent with respect to all parties in all situations or at least as consistent as possible. But the development of the doctrine of punitive damages in the past several decades has actually moved us in the opposite direction and it has moved us in the direction of unpredictability, not evenhandedness and is very much subject to passions which can be aroused by vigorous and inflammatory representation and counsel. To ensure public confidence in our justice system justice cannot be subject to capricious and unpredictable results. This is why in criminal cases we have never given juries the unfettered ability to set maximum fines.

Ms. FURSE. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, in case Members have not been following the debate closely, it has been a great break for Wall Street and the advice of the day is buy insurance company stocks because this legislation is a tremendous gift to the insurance companies. The gentleman who preceded me talked about generous contributions of the Democrats to the trial lawyers and consumers groups but what he forgot was that more than 12 times as much money flowed from insurance companies and other corporations to the Republican Party. And they are getting their payoff here today.

We are going to preempt the judgment of every jury in America on this floor today. The judgment of that side of the aisle is better than those 12 or 10 men and women who sit in judgment of their peers. We are throwing equal justice out the window. We are imposing caps, we are imposing discriminatory caps, caps that say, well, if you are a middle-income worker or you are a spouse or you are a child or a college student, you are worth a lot less in terms of punitive damages than a corporate executive.

That is what this amendment would overturn. Otherwise we will impose that discrimination, we will give that benefit to the better off, enshrine it in Federal law. We always knew the wealthy have done better in court. Now we are going to mandate that the wealthy do better in court.

What about the Ford Pinto? There has not been much discussion of that down here today. Do my colleagues not think there is a place for punitive damages when one of the largest corporations in the world willfully, it knows that its product is defective and it will cause death, and it willfully hides that.

Mr. HYDE. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from Virginia [Mr. GOODLATTE], and I would hope the gentleman could tell us some insurance companies that cover punitive damages. My understanding is they will cover negligence, but they do not cover punitive. But apparently they do; the gentleman from Oregon said so.

Mr. GOODLATTE. I thank the chairman for yielding me this time and I think he makes an excellent point.

This is a very important amendment to defeat, and the reason it is is that it is going to effectively limit our ability as a country to have a due process, a due course for setting public policy in this country. The problem we have is that only in recent decades has it become popular to offer up through juries multimillion dollar punitive damage awards that have the effect of going well beyond what juries were selected to do. And the jury system in this country is an excellent one. It works very well when it is working to resolve disputes between two or more people in court.

But when you arbitrarily have a system in this country where a jury in one community in the country can impose a multimillion dollar punitive damage award and have the effect of changing public policy in this country, sometimes good, sometimes not so good, as in the case of a Mercedes Benz scratch on a vehicle where a multimillion-dollar award is made.

And how about this case that Justice Lewis Powell wrote about involving an insurance company that appealed a jury's punitive damage award of $3.5 million on its alleged bad faith failure to pay $1,650.22 on a $3,000 insurance claim. Now where is the predictability and fairness of this to anybody doing business in this country, large business or small, to say that when you have a $3,000 insurance policy, and one of your many thousands of employees screws up and does not pay $1,650, that somebody should be liable for $3.5 million? What kind of windfall is that to the plaintiff in that case? It is absolutely inappropriate and it should not be allowed. That is why these caps are important.

The gentlewoman makes a point that there is discrimination in the way this is imposed, because somebody who has larger economic damages will receive more than somebody who has smaller economic damages.

In point of fact it could be the reverse, though, because an executive could have very small economic damages and a janitor could have very high medical bills and lost income and so on if it goes for many years.

But notwithstanding that point, let me point out this: We can cure this problem by adopting the amendment that is coming up shortly. Why should the plaintiff receive punitive damages in the first place? The plaintiff is rewarded for economic damages. That is the lost income they have. That is the lost future income they have. That is the medical bills they have and other out-of-pocket expenses. In addition, though, they are entitled to noneconomic damages for pain and suffering.

This is something that is beyond what the plaintiff has lost, both in terms of their pain and in terms of their actual loss, and it ought to be going to a public good, if it is indeed intended to punish somebody.

We can solve this by adopting the Hoke amendment which gives the preponderance of punitive damage awards to the State, to the State Treasury for the general public good. That is what should be done with the punitive damage awards we allow underneath the caps and that will solve the problem of discrimination, because plaintiffs are given compensation based on economic damages and noneconomic damages and not based upon punitive damage awards.

That is what Justice Powell pointed out when he wrote that "Alabama's system," that is where that award was made, "like that employed by other States that permit punitive damages, invites punishment so arbitrary as to be virtually random: In each case, the amount of punitive damages is fixed independently, without reference to any statutory limit or the punishment applied in any other case." Jurors award punitive damages cases, they determine the dollar amount between zero and infinity. "This grant of standardless discretion to punish has no parallel in our system of justice. In the Federal system and in most States criminal fines are imposed by judges," and I oppose the amendment.

Ms. FURSE. Mr. Chairman, I yield 1½ minutes to the gentleman from New York [Mr. HINCHEY].

Mr. HINCHEY. Mr. Chairman, there is no doubt that our legal system can and should be improved. But this measure like so much of the Contract With America, goes too far. It is extreme, it is radical and it is unfair. It would deny people their opportunity to go to court to get justice.

Let me tell you a story of a person who lives near my district. Alice Hayes, 57 years old, worked on an assembly line all her life, went to work one day in the plastics molding factory, stuck her hands in the machine to remove the plastic mold, and the machine came down on those hands and severed them and her forearms as well. Alice Hayes no longer has her hands and no longer has her forearms; she will never get those hands back. But under the present law in New York, she at least has the opportunity to get justice. Under this bill she will lose both, her hands and the opportunity for justice.

This amendment at least provides some opportunity for punitive damages, so that she could be somewhat compensated for the loss that she has sustained. This bill will deny that opportunity.

This amendment should be passed.

Furthermore, this bill ought to be defeated.

There was another instance, an elementary school in Coldenham in which one day the cafeteria wall collapsed and the roof came crashing down on the children in that school. A number of them lost their lives, others were injured.

This bill will prevent them from getting the opportunity for justice.

The amendment should be passed.

The bill should be defeated.

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentlewoman from New York [Ms. VELÁZQUEZ].

Ms. VELÁZQUEZ. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I rise in strong support of the amendment. The cap on punitive damages is one of the most antiwomen extreme Republican measures introduced this year. It must be removed.

Contraceptives, breast implants, and other pharmaceutical products have been put on the market, and later found to cause very serious injury to millions of women. Punitive damages are often the only thing that saves millions of others.

A. H. Robbins implanted over 2 million women with Dalkon Shields—even though the company knew that they could develop a life-threatening uterine infection. After large punitive damage awards, they quickly pulled the IUD from the market.

Juries award punitive damages when manufacturers act with extreme recklessness, or conscious disregard of harm. Large awards encourage companies to quickly pull dangerous products from the shelves. They deter others from selling harmful devices.

Punitive damages save lives—often women's lives. I urge my colleagues to vote for this amendment, and remove one of the worst antiwomen measures considered by this Congress.

□ 1615

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. I thank the gentlewoman for yielding this time to me.

Mr. Chairman, I rise to ask the real question as to what we are doing here today. First of all, because I think that we are misleading the American people by saying that by this amendment we are removing the element of protection under punitive damages. The States are already handling this.

What this amendment does is it recognizes needs of women and children, and it particularly helps me to address the questions of Marilyn, a loving grandmother in my district in my hometown of Houston, TX, whose faulty silicon breast implants have caused her total disability and agony.

Marilyn's daughter, Theresa, also suffers from severe neurological disorders that have been passed on to her by her mother. And as Theresa breastfed her three children, Marilyn's 5-year-old granddaughter now shows symptoms of silicon poisoning.

Do we not realize that since 1965 to 1990 there have only been approximately 358 punitive damages cases, and most of them have been overturned? The real question is that we must look at whom we are trying to address, business to business? We are willing to do tort reform and help them, but we are also going to abuse our women and children in the process.

Ms. FURSE. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, I rise in strong support of this important Furse amendment.

Mr. Chairman, one of the most revealing features in the Republican Contract With America is the limit on punitive damages. Because this limit will take away one of the most effective means of protecting Americans from the products that will kill, maim, induce sterility, or otherwise injure.

Of course, the most profound lie being told about punitive damages is that they are awarded too often. The truth is that punitive damages are awarded only in rare cases. Between the years 1965 and 1990, there were just 355 punitive damage awards in product liability cases. Excluding asbestos cases, there were an average of only 11 such awards each year, many of which were reduced on appeal.

In exchange for the rare egregious cases that punitive damages are assessed, there are immeasurable gains in public safety. That's right, this limit on punitive damages to three times economic loss or $250,000 is a massive assault on public safety. I ask you to listen closely and I will tell you why.

Parents of America listen to this. In 1980 a darling 4-year-old girl was permanently maimed with second and third degree burns when her highly flammable pajamas caught fire. She merely reached across the kitchen stove to turn off a timer. Company officials were quoted as saying they new the pajamas were unreasonably flammable, and that making them flame retardant was economically feasible. But they failed to take the steps needed to protect the little girl. It took the

sanction of punitive damages to get the company to act responsibly and make children's pajamas safe.

Women of America remember the crime of super-absorbent tampons and toxic shock. The manufacturers of Playtex's super-absorbent tampons knew, according to the 10th Circuit Court's findings, that their product could increase the risk of toxic shock but, according to the 10th Circuit Court, "deliberately disregarded studies and medical reports linking high absorbance tampons fibers with increased risk of toxic shock." Countless of innocent women suffered. It took $10 million in punitive damages to force Playtex to take the deadly product off the market. This is the type of crime the Republican contract would allow to go unchecked.

Women of America will also remember breast implants that manufacturers knew were not safe. Women were left in wheelchairs, weak, ill, and disabled for life. Punitive damages got these off the market.

And for anyone who likes the outdoors, listen to this. Had this bill been law during the Exxon *Valdez*, the punitive damage limit would have shielded Exxon's liability to just $860 million, the equivalent of 4 minutes of Exxon's annual revenues.

And even worse, the punitive damages limit preempts all State punitive damages laws. This bill will limit punitive damages in State actions for sexual abuse of children [New Jersey Stat. Ann Sec. 26:5C–14], Drunk Driving [Minnesota], for the selling of drugs on minors [Illinois], and for much else at the State level.

This bill's obnoxiousness does not end there. It is patently discriminatory against women as well as middle and low wage earners. That's because punitive damages are calculated by economic damages alone, with noneconomic damages like the loss of reproductive ability being totally discounted. If an insurance executive making $1 million and a middle-class housewife who stays at home taking care of her family are both injured by the same product, the insurance executive would be eligible for $3 million in punitive damages, whereas the housewife eligible for only $250,000, less than 10 percent. This would be so even if the injury resulted in the woman's sterility.

Where is this new majority's commitment to fighting these types of crime. Why such the rhetoric when it comes to stopping crime that occurs in the streets, but not crimes that occur in our commercial relations.

Without this amendment, this bill will severely limit the rights of States trying to stop child sexual abuse, of women whose reproductive organs will be vastly undervalued, of average working Americans who depend on our laws to deter the biggest corporations from injuring us with defective products. I urge support of the amendment.

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. I thank the gentlewoman for yielding this time to me.

Mr. Chairman, if we take the case which is before us and we change it just slightly, the business executive who was mowing the lawn and his 15-year-old son or daughter was mowing the lawn and the engine of the lawnmower exploded, blinding the executive, blinding the daughter, the measure of damages now would be, under this punitive new standard, that the executive could collect his $3 million as a punitive damage. The girl, the daughter, could only collect whatever the jury might think she might be entitled to, but capped at her economic worth, which is $5 an hour, which is what her mother or father was paying her to mow the lawn.

The point of a punitive suit being to send a signal to the entire lawnmower industry to fix this engine. Now, who should collect? It should be that little girl, not some socialistic scheme that gives the money back to the States. It should be to that girl who had the courage to bring the case.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa [Mr. GANSKE].

While Mr. GANSKE is approaching the well, I might add that the case that the gentleman from Massachusetts [Mr. MARKEY] mentioned, the lifetime diminution of earnings for the young girl, would amount to a lot more than what the gentleman has on the chart.

Mr. GANSKE. I thank the Chairman for yielding this time to me.

Mr. Chairman, I rise to speak against the amendment and in support of the bill.

For 2 days now, the opponents of this bill have brought up the issue of breast implants.

Now, although I disagree with their interpretation of the facts, I think the issue of silicon silastic is a good example of why we need a product liability bill.

There has been a tremendous amount of disinformation on this issue. I can speak from personal experience. My mother had breast cancer when she was 23 years old. She had a breast reconstruction about 8 years ago.

I have personally reconstructed over 200 women who have had mastectomies for cancer.

The science shows a couple of things: First, there is no correlation between silicon implants and cancer. There is no correlation between silicon implants and autoimmune diseases, as attested to by the recent statement by the American College of Rheumatology.

But I think a bigger issue—and we can disagree with these things—but the bigger issue is this: If you get into a situation where a jury is making this kind of decision as to whether a whole class of products will be available or not, then that jury is legislating. And what we have is a situation then where, if we lose, a type of class of medical products, silicon silastic, for example, is the basic material for such things as in-dwelling catheters for cancer patients. It covers cardiac pacemaker batteries, for example. It is a material that makes cerebral spinal fluid shunts for babies who have hydroencephalitis.

The point is that if you have a disagreement on a material, the proper procedure would be for this to go through a regulatory agency process, have a cost-benefit scientific analysis, and if there is a disagreement, then you bring that on to the floor of the legislature to be debated.

I think the issue is really this: that when we get involved with some of the scientific issues, let us go through a regulatory process, debate it on the floor of Congress. But the situation with the punitive damages is that one jury out of 100 will make such a huge award that their action, then, is making a determination for the whole rest of the country in terms of a whole class of products.

That is why I would urge my colleagues to reject this amendment and to vote for the bill.

Ms. FURSE. Mr. Chairman, I would like to close by saying that this is such a simple amendment. In this amendment we are not talking about whether there should be punitive damages. The Speaker who came before me I do not think realizes that for punitive damages you have to prove conscious, flagrant indifference to the safety of others.

What my amendment says is, if you have two cases, two cases with the same injury, the same guilt, you should have the same punishment.

But under H.R. 956, the Republican bill, if you have two cases with the same injury, the same guilt, you get different punishments. Why is that? That is not justice as we know it in America.

I ask people to vote for my amendment. What my amendment says is that every person injured has the right to the same treatment under the law.

I thank the gentleman and yield back.

Mr. HYDE. Mr. Chairman, I yield the remainder of the time to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Chairman, the people who support this amendment would have everyone believe that unless the amendment is adopted, we are taking away peoples' rights to sue. That is not the case. There is a constitutional right to sue, and even if we wanted to take that away, which we do not, that could not be taken away under the Constitution.

Second, those who support the amendment would have everyone believe that there is a different standard of justice that is applied. That is not true either. The jury makes the determination of economic damages based upon the evidence that is placed before it. That jury cannot discriminate based upon race, based upon age, or based upon gender. It is based upon the evidence that is introduced in that trial

and admitted into evidence. And they make the determination on what the economic damages are, and they issue a verdict that will make a plaintiff who has been a victim of the negligence of another, whole.

What we are talking about here is punitive damages which are over and above making the injured party whole, in placing a cap on those punitive damages. Punitive damages are not intended as compensation, they are intended to be punishment. In the case of Browning Ferris Industries versus Kelso, 1989, all nine members of the Supreme Court of the United States expressed concern regarding punitive damages. Those justices are not extremists, those justices are not Republicans, those justices look at the law in the cases that come before them.

Justice Brennan, who is hardly a rightwing extremist, and countless other members of the Court have stated time and time again that punitive damages are for punishment of aggravated conduct and are a windfall to the plaintiffs.

The impact of such a windfall recovery is both unpredictable and at times substantial, said the court in Newport versus Fall Concerts, 1981. "Juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused," said the Supreme Court in Gertz versus Robert Welsh, Inc., 1974.

Let us put some sense in this area. Let us reject the Furse amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentlewoman from Oregon [Ms. FURSE].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Ms. FURSE. Mr. Chairman, I demand a recorded voter.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 155, noes 272, not voting 7, as follows:

[Roll No. 223]

AYES—155

Abercrombie
Ackerman
Andrews
Baldacci
Barcia
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
English
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gonzalez
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hefner
Hilliard
Hinchey
Holden
Hoyer
Istook
Jackson-Lee
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Mascara
Matsui
McDade
McDermott
McHale
McKinney
Meehan
Meek
Mfume
Miller (CA)
Mineta
Minge
Mink
Moakley
Murtha
Nadler
Neal
Oberstar
Olver
Ortiz
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pomeroy
Poshard
Rahall
Reynolds
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Slaughter
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thurman
Torres
Traficant
Tucker
Velazquez
Vento
Visclosky
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Yates

NOES—272

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Jacobs
Johnson (CT)
Johnson, Sam
Jones
Kaptur
Kasich
Kim
King
Kingston
Kleczka
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
LoBiondo
Longley
Lucas
Manzullo
Martinez
Martini
McCarthy
McCollum
McCrery
McHugh
McIntosh
McKeon
McNulty
Menendez
Metcalf
Meyers
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Moran
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Obey
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Reed
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thornton
Tiahrt
Torkildsen
Torricelli
Towns
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Wynn
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—7

Cubin
Forbes
Kelly
Livingston
McInnis
Morella
Rangel

□ 1646

The Clerk announced the following pairs: On this vote:

Mr. Rangel for, with Mr. Forbes against.

Mr. CHAPMAN and Mr. TORRICELLI changed their vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. KELLY. Mr. Chairman, I voted "nay" on the Furse amendment to H.R. 956, Common Sense Product Liability and Legal Reform Act, but my vote did not register by the electronic voting device.

PERSONAL EXPLANATION

Mr. MCINNIS. Mr. Chairman, I was unable to vote on rollcall Vote No. 223 because I was serving as the chairman pro tem of the Committee on Rules, during this vote. Had I been present, I would have voted "no" on the amendment offered by Representative FURSE.

The CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. Chairman, I offer an amendment at the desk, made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 3, line 12, strike "are" and insert "is".

Page 3, line 15, strike "protect" and insert "project".

Page 3, line 23, strike "and is costing" and insert "causing".

Page 4, line 18, strike "transactions" and insert "transaction".

Page 8, beginning in line 2, strike "Except as provided in subsection (c) in" and insert "In".

Page 8, line 11, strike "the" and insert "a".

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

(e) EXCEPTION.—

(1) REASONABLE CARE.—A failure to exercise reasonable care in selecting among alternative product designs, formulations, instructions, or warnings shall not, by itself, constitute conduct that may give rise to punitive damages.

(2) AWARD OF OTHER DAMAGES.—Punitie damages may not be awarded in a product liability action unless damages for economic and noneconomic loss have been awarded in such action. For purposes of this paragraph, nominal damages do not constitute damages for economic and noneconomic loss.

Page 18, line 17, strike "CONSIDERATION" and insert "CONSIDERATIONS".

Page 29, in lines 8 and 12, strike "has" and insert "has or should have".

MODIFICATION TO AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I ask unanimous consent to delete lines 1 through 9 on page 1 of my amendment in subparagraph E, and on page 2, lines 1 through 4.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment offered by Mr. HYDE: Strike out "Page 18, redesignate" and all that follows through the proposed new subsection (e) of section 201.

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

Mr. CONYERS. Mr. Chairman, reserving the right to object, I want to commend the gentleman from Illinois [Mr. HYDE] for this modification, which has come about as a result of the discussions between our staffs. I think this is a very important deletion, because it makes the amendment more technical and takes out the part that was giving us a lot of trouble. I commend the gentleman.

Mr. Chairman, I withdraw my reservation of objection.

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

There was no objection.

The CHAIRMAN. The amendment is modified.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. HYDE, as modified: Page 3, line 12, strike "are" and insert "is".

Page 3, line 15, strike "protect" and insert "project".

Page 3, line 23, strike "and is costing" and insert "causing".

Page 4, line 18, strike "transactions" and insert "transaction".

Page 8, beginning in line 2, strike "Except as provided in subsection (c), in" and insert "In".

Page 8, line 11, strike "the" and insert "a".

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

Page 18, line 17, strike "CONSIDERATION" and insert "CONSIDERATIONS".

Page 29, in lines 8 and 12, strike "has" and insert "has or should have".

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] is recognized for 5 minutes, and a Member in opposition will be recognized for 5 minutes.

The Chair recognizes the gentleman from Illinois.

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

Mr. Chairman, this amendment consists primarily of technical corrections to the text of H.R. 1075. It is almost exclusively technical in nature.

In section 101, Findings and Purposes, the amendment changes the tense of words, corrects typographical errors, and makes a plural word singular.

In section 105, Misuse or Alteration, it removes the reference to a nonexistent subsection (c) and says "a" defendant, rather than "the" defendant.

In the heading for subsection 201(f) the amendment makes the word "Consideration" plural, because there is a list of nine different factors that the jury is directed to consider.

In section 303 which is the Definitions section of the Biomaterials Suppliers title, the amendment makes it clear that a person would not be a "biomaterials supplier" within the meaning of title III, if it has "or should have" registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act, or has "or should have" included a medical device on the list of devices filed with the Secretary of HHS pursuant to section 510(j) of the same law.

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

The CHAIRMAN. Without objection, the gentleman from Michigan [Mr. CONYERS] can claim the 5 minutes in opposition to the amendment.

There was no objection.

Mr. CONYERS. Mr. Chairman, I do so, and I yield myself such time as I may consume. Mr. Chairman, I agree that the interpretation given by the chairman of the Committee on the Judiciary is correct. I think the gentleman has facilitated this, with a lot of time being saved by his having made the deletion. We have no objection to the technical amendment, and urge support of the amendment.

I yield back the balance of my time.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE] as modified.

The amendment, as modified, was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 9 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer an amendment made in order pursuant to the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. OXLEY: Page 19, insert after line 19 the following:

(f) DRUGS AND DEVICES.—

(1)(A) Punitive damages shall not be awarded against a manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) which caused the claimant's harm where—

(i) such drug or device was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(ii) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(B) Subparagraph (A) shall not apply in any case in which the defendant, before or after pre-market approval of a drug or device—

(i) intentionally and wrongfully withheld from or misrepresented to the Food and Drug Administration information concerning such drug or device required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and relevant to the harm suffered by the claimant, or

(ii) made an illegal payment to an official or employee of the Food and Drug Administration for the purposes of securing or maintaining approval of such drug or device.

(2) PACKAGING.—In a product liability action for harm which is alleged to relate to the adequacy of the packaging (or labeling relating to such packaging) of a drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer of the drug shall not be held liable for punitive damages unless the drug is found by the court by clear and convincing evidence to be substantially out of compliance with such regulations.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio [Mr. OXLEY] will be recognized for 20 minutes, and a Member opposed to the amendment will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I rise to offer the bipartisan FDA defense amendment, along with my colleagues Mr. COBURN, Mr. BURR, Mr. TAUZIN, Mr. BREWSTER, and Mr. STENHOLM.

Mr. Chairman, the amendment states simply that when the manufacturer of a drug or medical device receives premarket approval from the FDA and complies with all post-approval reporting requirements, the manufacturer will not be liable for punitive damages in a civil suit.

The amendment protects the rights of plaintiffs to receive full compensatory damages, including pain and

suffering. Punitive damages are not compensatory. They are intended to punish malicious conduct. To bring a drug from the laboratory to the marketplace takes on average 9½ years and costs manufacturers $350 million. The sponsors and supporters of this amendment believe that compliance with the process, and post-approval reporting requirements, clearly demonstrate a lack of malice. Punitive damages are quasi-criminal in nature, and careful adherence to an expensive 10-year process is certainly not criminal.

Members have asked me, what if the manufacturer knows the drug is dangerous, but still goes through the process and gets FDA approval? The defense is denied in that case, as it is when a manufacturer discovers a problem after approval. The defense only applies when the maker of the drugs or device acts in good faith and discloses all relevant information.

This amendment is needed to provide some predictability for liability in the development of life-saving drugs and medical devices. Because of our liability lottery, drugs are more expensive in the United States than almost anywhere on Earth. Products are kept off the market, or withdrawn after introduction. The effect of our liability system on drugs and medical devices was recently summarized by the American Medical Association:

> Innovative new products are not being developed or are being withheld from the market because of liability concerns * * * Certain older technologies have been removed from the market not because of sound scientific evidence indicating lack of safety or efficacy, but because product liability suits have exposed manufacturers to unacceptable financial risks.

Mr. Chairman, writing on punitive damage damages, Justice Lewis Powell said, "* * * punitive damages invite punishment so arbitrary as to be virtually random."

Faced with a threat of random punishment, many manufacturers are understandably reluctant to put a new drug or device on the market. Our amendment says to them invest $350 million, wait 9½ years, obtain FDA approval, observe all reporting requirements, disclose fully, and we will say you did not act wantonly or maliciously. If your product causes injury, you are responsible for compensation. That determines the difference between economic and noneconomic and punitive damages. The plaintiff will be able to recover economic and noneconomic damages.

This amendment is common sense and deserves the support of this body. I urge my colleagues to support this amendment.

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

□ 1700

The CHAIRMAN. Is there a Member who wishes to manage opposition to the amendment?

Mr. DINGELL. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] is recognized for 20 minutes.

Mr. DINGELL. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, the FDA defense has been a topic of considerable discussion and controversy over the years. In the past I have supported the adoption of provisions affording the FDA defense. This was done based on my belief that strong support and appropriate oversight by the Congress would enable the FDA to provide thoughtful, careful review for drug and medical device approvals and scrupulous post-market surveillance, all of which are essential to the protection of the American consuming public.

If this were to be the case, there would be no question but what Congress should afford the FDA approval as a defense against punitive damages. Regrettably, that appears not, however, to be the case. Times have changed and it appears that congressional support for FDA and support for a strong, viable, adequately-funded, well-staffed agency is at risk at this particular time.

We have been hearing about privatizing, cutting back, reducing and eliminating FDA. It is my strong belief that until these questions have been satisfactorily resolved and until we are satisfied that FDA approval really means something, that we should not then afford a weakening of the civil suit process which affords protection to the American consumer from misbehavior by manufacturers of devices and prescription pharmaceuticals.

The ability of FDA to properly process the business before them, to see to it that the new drugs are properly approved, that all information necessary is produced, to see to it that there is no deceit or duplicity in the offer, to see to it that there are no changes in the drugs as manufactured, to see to it that the Food and Drug Administration's requirement for good manufacturing practices be met during the manufacturing of the drugs is absolutely essential to consumer safety. If that is to be tampered with or impaired with through the budget process or through actions of Congress or through less than vigorous enforcement by the administration because of lack of adequate funds or because of congressional pressure, then clearly this kind of amendment is not in the public interest.

I would urge, therefore, that until we have seen more fully the state of affairs with regard to the strength and the adequacy of FDA supervision of new drugs, new drug applications, and with regard to the safety and adequacy of supervision by FDA of devices, that this Congress should not relax the supervision that is given to manufacturers of both devices and prescription pharmaceuticals until we are more sure that the protections of FDA are meaningful and have not been impaired by budget cuts, by reductions in the authority of the agency, by roll back of the abilities of the agency to carry out its responsibility or by actions like those taken more recently by the Congress in setting up cost-benefit analyses and things of that kind. Those are actions which are inimical to good protection of the consumer and to assurances of adequate safety, because if FDA must take that length of time to do these things, they will not be looking at the question of safety of prescription pharmaceuticals or devices from the standpoint only of health and safety of the individual who purchases that commodity.

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

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. BURR].

Mr. BURR. Mr. Chairman, I rise today in support of the FDA exemption amendment. In the past several weeks, we have made many efforts to streamline government and to eliminate unnecessary duplication. This is another area where we can effectively do just that.

The Food and Drug Administration has been charged with scientifically weighing the risks and benefits that go along with the development of pharmaceuticals and medical devices. Anyone would be hard pressed to successfully argue that randomly selected tort juries are more qualified to reach these difficult, scientific conclusions.

Progress comes with a certain degree of risk. Opponents of this amendment have argued that it will limit the ability of those harmed by a minimal risk factor to receive compensatory and non-economic damages such as pain, suffering, and lost wages.

This amendment does not preclude their right to just compensation.

By offering this exemption from punitive damages, our amendment will allow many people to reap the benefits of drugs and devices that companies have not manufactured, for fear of litigation.

Support life drug research. Support a scientific balance between benefits and risk. Support the Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment to H.R. 1075.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I just wanted to cite a case of corporate wrongdoing that would benefit by the passage of this amendment as an example of why it should not pass. This is the O'Gilvie versus International Playtex case from Kansas, 1985, where Playtex voluntarily removed from the market tampons linked to toxic shock syndrome after a Federal court jury

awarded compensatory and punitive damages. A Kansas woman died from toxic shock syndrome using the company's super-absorbent tampons.

Playtex had complied with FDA regulations. It had gotten that approval fair and square. However, the jury found that the FDA requirements only set minimum standards and mere compliance with those standards had been inadequate under the circumstances.

Mr. Chairman, the 10th circuit, in reviewing the case on appeal, found that there is an abundance of evidence that Playtex deliberately disregarded studies and medical evidence linking high-absorbency tampon fibers with increased risk of toxic shock at a time when other manufacturers were responding to this information by modifying or withdrawing their product. Moreover, there is evidence that Playtex deliberately sought to profit from this situation by advertising the effectiveness of its high-absorbency tampons when it knew that other manfacturers were reducing the absorbencies of their products due to the evidence of casual connection between high absorbency and toxic shock.

Mr. Chairman, consumers are now protected from this product. With the passage of this amendment, we will be turning the clock back on consumer protection. Unfortunately, it is consistent with the loser pays and limits on awards and other discouragements from people bringing these meritorious suits to protect the consumer from these products.

I hope we will defeat the amendment.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. Mr. Chairman, I want to thank the gentleman from Virginia for bringing this up for in fact that is a misconception on the case against the Playtex. And under this bill, they would be fully liable. They would not be excluded under this amendment from full prosecution, and they would have been exposed to FDA clearance and punitive damages. This bill would not have excluded that agreement from punitive damages. Because, in fact, they have knowledge or did have knowledge of the worsening condition which was required to be reported to the FDA.

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

Mr. COBURN. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, if they complied and provided all of the information and FDA approved it anyway, when there were studies that the FDA just approved it, when the jury found that only minimum standards were set——

The CHAIRMAN. The time of the gentleman from Oklahoma [Mr. COBURN] has expired.

Mr. DINGELL. Mr. Chairman, how much time remains on both sides, please?

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] has 14 minutes remaining, and the gentleman from Ohio [Mr. OXLEY] has 14 minutes remaining.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding time to me.

Just on this last point, the exemption from immunity for punitive damages is the defendant before or after premarket approval of a drug or device intentionally and wrongfully withheld from or misrepresented to the FDA information concerning such drug or device. It is not whether or not the party knew that harm could come from the product, whether there was any of that kind of conduct. It is withholding of information from the FDA. That is the only escape clause here.

I disagree, from what I have heard about this case, with the gentleman.

The point I would like to make follows up a little bit on the gentleman from Michigan's point. We are getting, sometimes there is a great deal of pressure on the FDA to loosen up its regulatory process to allow drug approval quicker. In my own area where the medical device manufacturers, they are furious and being driven crazy by the delays they have in getting products on the market. But never one has ever said to me that they should be able to get away from accountability and responsibility for their negligence or avoid punitive damages for the conduct, intentional or wanton disregard, conduct, or reckless conduct from tort liability.

I just find it very strange that the same party that is promoting the concept of deregulation so strongly now wants to undermine the other way in which we can keep parties responsible to a high standard of conduct, which is the accountability through the judicial process. When you do both, I promise you the consequence is going to be greater negligence, greater harm, less willingness to take the kinds of precautions necessary to avoid danger. That is why I think this is a bad situation.

I would like to read about one case myself. In 1980 the drug Zomax, a painkiller, was marketed by the McNeil Drug Co. Reports in 1982 of allergic reactions causing death and severe illness came to McNeil. McNeil reported those adverse drug reactions to the FDA as required, thereby not getting out of avoiding that problem of the punitive damage suit if this were to be in effect, and the company embarked on a massive selling campaign to get rid of the supply before the word spread about the negative side effects. The salesmen were instructed to not bring up the subject.

During the McNeil sales campaign 14 people died and over 400 suffered life-threatening allergic reactions. Incidentally, McNeil Pharmaceutical called its Zomax campaign one-eleven, representing the $111 million sales target by McNeil.

When you have this law in place, FDA has approved it, FDA had all the information, but Zomax acted wrongfully and in an intentional—McNeil acted wrongfully and in an intentional fashion to market a product they knew had adverse reactions without advising the consumers of this and without letting the FDA know that they were increasing their marketing.

Mr. OXLEY. Mr. Chairman, I yield 1 minute and 30 seconds to the gentlewoman from New York [Ms. MOLINARI].

Ms. MOLINARI. Mr. Chairman, I rise today in strong support of the amendment of the gentleman from Ohio [Mr. OXLEY], and I urge my colleagues to include it in the bill.

The purpose of the amendment is very simple. If the FDA has approved a drug or a device, then the manufacturer cannot be held liable for punitive damages, unless, as in the case of the tampons and the toxic shock syndrome, the company withheld information regarding potential damages. This amendment in that case clearly would not apply.

Mr. Chairman, I find it disturbing that some opponents of this amendment claim it is antiwoman. This is a provision that is prowomen. I will tell you why.

Last year $600 million was spent on cosmetic research, $30 million was spent on contraceptive research. Only two companies currently perform contraceptive research. The reason why is they fear huge punitive damages. Research in this area and in the larger area of reproductive health is too risky for companies. And it is not just reproductive health research. It is research on other diseases, too.

One in nine women will get breast cancer in her lifetime, and although there are treatments, there are no cures. It frightens me that there may be a cure out there but companies will not find it, because the risk liability is too great. We cannot afford to let this happen, not for breast cancer, not for uterine cancer, not for any disease that strikes predominantly men or women.

It is a tragedy, but we should not punish companies that play by FDA's stringent rules. If you ask me, I think it is a far greater tragedy that young men and women die because drug companies are afraid to pursue research.

□ 1715

Mr. DINGELL. I yield 4 minutes to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, let us understand that this legislation before us today sets a very high threshold before punitive damages can be awarded. I think what this amendment is doing

is using the FDA as a cover for manufacturers whose products have caused real harm to consumers. Even in cases where the manufacturers' behavior has been egregious, malicious, or knowingly negligent, there is a high standard for collection of awards. Title II of the bill states that in order to collect punitive damages, a claimant must be able to show by clear and convincing evidence that a manufacturer specifically intended to cause harm or engage in conduct that illustrated a conscious, flagrant indifference to the safety of others.

If a plaintiff who is injured can maintain that threshold and show that a company acted with flagrant disregard for the safety of others, why should a drug company be protected because of the FDA approval? The FDA approval does not mean that the FDA is there as a watchdog, to be sure that the company, after it has that approval, is doing everything it properly should. The FDA may never know about the complaints that the company has had that the product that they manufacture is now causing a lot of harm to people, yet they continue to sell it. Should an injured consumer be punished if a company continues to sell a product which it knows or suspects is not performing properly, when the company was in possession of numerous consumer complaints or other kinds of reports that it may, technically, not have been "required to submit" to the FDA?

Mr. Chairman, the FDA has very limited independent legal authority to demand documentation from manufacturers, nor does the agency have the resources to police these manufacturing facilities. The agency relies on the manufacturers to be honest and to follow the rules. The majority of them, no doubt, do that.

However, what about those cases where they do not, but they still technically meet the test of this amendment; that is, they submitted what was required to FDA, they have not bribed an official, they have not lied to the FDA during the product review in order to receive an approval? What about those cases where there is harm and that harm is a result of the company's misconduct, or of the company's taking chances on safety, of a company's operating just on the razor's edge of legality?

For those cases, this bill establishes, elsewhere, a high standard under which consumers would seek punitive damages. That standard is sufficient to protect ethical, honest, careful companies. Such companies do not need to hide behind the shield of this FDA defense that this amendment would provide.

Mr. Chairman, I would like to point out that we do not have a crisis of high punitive damages being awarded in these cases. The reports about this kind of national crisis traceable to outlandish and numerous awards of punitive damages are not supportable by actual data. Contrary to what the supporters of this amendment would like us to believe, punitive damages are not common in product liability lawsuits. In the cases where such damages are awarded, they are not excessively high.

A number of scholarly legal studies published between 1987 and 1991 concluded that punitive damages in a variety of State jurisdictions was awarded in no more than 8 percent of the cases. In those cases, awards were on the average comparable in size to amounts awarded for compensatory damages.

Mr. OXLEY. Mr. Chairman, I yield 6 minutes to my good friend, the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Chairman, I thank the gentleman for yielding me this time, and I yield to the gentlewoman from California [Ms. HARMAN].

Ms. HARMAN. Mr. Chairman, as a woman, mother of four, and corporate lawyer, my life experience intersects the issues involved in this amendment in many ways. My decision to support it was a close one for me, and I thank my colleagues on both sides for giving me the time to explain my views.

On the one hand, all of us are horrified by the stories of individuals, many of them women, injured by drugs and medical devices. However, on the other hand, there is a fundamental fairness argument, and real evidence that our present system chills research and development on new drugs and medical device breakthroughs which could be enormously helpful to various at-risk communities, especially women.

This amendment is based on the view that if a drug manufacturer is in full compliance, and I stress, full compliance with Federal regulatory requirements, it should not be liable for damages designed to otherwise punish that behavior. I agree. To be sure, the FDA is not all-knowing when it comes to assuring product safety, but it is the best mechanism we have available in balancing the social values associated with drugs and medical devices and the unfortunate injuries which may result from known or unknown side effects. If there are ways to improve the FDA's performance, let us do it.

There are risk living in a modern, technologically advanced society. I hope we can minimize those risks, but I give a very high priority to the development of a predictable and fair system where pharmaceutical and biotechnology firms can rely on Government approval and reasonable limits on liability, and thus, invest the millions of dollars it takes to develop medical breakthroughs that will benefit all our citizens. Without these breakthroughs, women really will not have choice, none of us will have choice. None of us will have the opportunities that our first-rate and first-in-the-world medical system could offer.

I urge support of this amendment, and would make three related comments about this legislation. First, I hope as it moves through the Congress, two things will change. First, I think the noneconomic damages, which are extremely important to women, will be brought to a parity with economic damages, and, second, I think the cap on punitive damages should be raised at least to $1 million. I know many of us would have supported an amendment in this body to do so.

And third, my colleagues from California, Mr. WAXMAN, who preceded me to the well, was correct in pointing out that the explosion of civil suits has not been in the personal injury area. In California, at least, the number of personal injury suits has been level if not on the decline. Indeed, the number of such suits declined from 132,000 in 1988 to 88,000 in 1992. Still the bill before us is important in that it replaces the costly patchwork of state laws with a uniform law that speeds recovery and provides certainty to manufactures.

Mr. STENHOLM. Mr. Chairman, I yield to the gentleman from Oklahoma [Mr. BREWSTER].

Mr. BREWSTER. Mr. Chairman, I rise this afternoon to support this legislation. As a pharmacist, I know firsthand the need for the passage of the Oxley amendment. Our country has the most rigorous drug approval process in the world. A company which has researched and developed a new drug spends an average of $359 million to get that drug from the laboratory to the market.

They undertake exhaustive clinical trials involving thousands of individuals, spanning many years, before they are able to sell the product on the market. Often during the course of the trials problems arise and the project is stopped. Often a treatment has been in the research and development pipeline for many years before warning signs or problems have arisen and the trials are halted. Such clinical trials are similar to the gut-wrenching dry holes those of us in the oil patch are all too familiar with.

This amendment puts no limits on actual or noneconomic damages. It simply protects companies who have, in good faith, invested many years of work and millions of dollars in a product, from the fear of frivolous lawsuits and out-of-sight jury awards. I encourage my fellow Members on both sides of the aisle to vote "yes" on the amendment.

Mr. STENHOLM. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I thank the gentleman from Ohio [Mr. OXLEY] for his generosity with time. I rise in strong support of the amendment. This is an attempt to put some common sense back into our public liability system, and to allow technology in America to move forward.

Most of the criticisms of this amendment have to be balanced with a commonsense statement of saying that our current system is broken. Perhaps there are weaknesses by moving forward, but in my judgment, adopting this amendment, allowing technology to move forward, and saying to any individual company that if you in fact have a product that is approved under the best technology possibly available, and then something goes wrong because CHARLES STENHOLM uses it, at that time no punitive damages should be allowed because you have followed the rules.

If we cannot bring ourselves to adopt this kind of legal law, we are going to have a difficult time competing in the future marketplace.

Mr. Chairman, I rise in strong support of the Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment to H.R. 956, the Common Sense Product Liability and Legal Reform Act.

Our amendment offers a limited exemption from punitive damages for Food and Drug Administration [FDA] approved products. Manufacturers of drugs and medical devices are already subject to the agonizing delays and costly bureaucratic scrutiny of the FDA approval process, in order to determine if the benefits of a product outweigh the risks—not to assert that the use of a product carries no risk, or that all uses, under any circumstances are completely safe. In doing so, the FDA and medical community decide if the risks that a product poses are socially acceptable.

Under our current liability system, a jury second guesses this scientific evaluation done by the medical community and can punish manufacturers because their products are inherently risky.

Our amendment is simple, if a manufacturer or product seller of a drug or medical device which caused the claimants harm was premarket approved by the FDA, punitive damages shall not be awarded.

Opponents of this measure have said that it will prevent plaintiffs from suing drug and device manufacturers, and that it will hurt the consumer. This is simply not true. Punitive damages can still be sought in appropriate cases—those where the manufacturer was at fault, either by withholding or misrepresenting information or through participation in fraudulent activities. More importantly, injured parties will still be able to sue for compensatory damages. This amendment in no way limits compensation for loss, damages, pain and suffering.

The Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment makes good sense. I urge my colleagues to support this important amendment.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in reluctant opposition to the amendment, reluctant because one of the sponsors is my colleague, the gentleman from North Carolina [Mr. BURR].

However, I have concerns about this amendment on three counts. First, the FDA's responsibility is to set minimum standards for bringing a product to the market, and we should note that while we are setting a clear and convincing standard in our courts of law to win these cases, no such standard applies to the FDA.

Second, the regulatory process is subject to political pressures, economic pressures, and pressures that hopefully the jury system is not subject to. We factor out all of these things in the court, we hope, to the best extent possible, and get a fair and impartial verdict in the process.

The third point I want to make, Mr. Chairman, is when all else fails, I have started to read the fine print in these amendments that are being offered. I would submit to my colleague, the gentlewoman from California [Ms. HARMAN], that I do not see anything in this amendment which talks about full compliance.

I do see a second provision in the bill that goes beyond simply FDA approval, which says that the producer or manufacturer is exempt if the drug is generally recognized as safe and effective, pursuant to conditions established by the Food and Drug Administration. I have no idea, and I would submit to my colleagues that they have no idea, what kind of Pandora's box that opens up for litigation, because every kind of product or drug which comes to the market that ever gets through the process is going to be recognized, we hope, as generally safe and effective.

Mr. Chairman, I think when we start setting one standard, clear and convincing, to win cases, we ought to at least be holding the regulatory bodies to that same standard if we are going to say that compliance with their regulations will make the manufacturer immune from liability.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BILBRAY], a valuable member of the Committee on Commerce.

Mr. BILBRAY. Mr. Chairman, tonight we are speaking a lot about lawyers, a lot about corporations, a lot about pharmaceutical companies, but we are talking about consumers only as victims. However, the victimization goes both ways, Mr. Chairman. We hear a lot about the things that go wrong in our society when people use products. We hear about the bad things that the consumer products do.

However, Mr. Chairman, we do not talk about the fact, about the woman who goes to her pharmacist to be able to get a drug that she has used for years, but that drug no longer is available to her, not because the FDA found it not safe, not because a court found that it was not safe, but because of the huge liability that was being created by lawsuits that were being brought forward without merit, but with substantial resources, to the point where they were driving these products off the market.

Mr. Chairman, for years Bendectin has been used by pregnant women for a long time, and it is not available today for one reason, and that is because of lawsuits.

□ 1730

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the gentleman for Louisiana [Mr. TAUZIN], a member of the committee.

Mr. TAUZIN. I thank my good friend, the gentleman from Michigan [Mr. DINGELL], for yielding me the time.

Mr. Chairman, let me just say that when we talk about punitive damages, we are talking about quasi-fines. Quasi-fines. It is one thing to say that you are going to fine somebody for doing something wrong. It is another thing to say that we are going to first authorize you to do it as a Government agency and then allow you to be fined for doing it even though we said it is OK to do it. That is the issue in this debate.

The FDA goes through an extraordinary process of approving drugs for the American public. It is a lengthy, complicated process. Once they approve something for us, they put their stamp of approval on it, should we as a government say now we are going to allow somebody to sue you and collect a fine after we have authorized you to sell that particular drug or product to the American public?

It seem a bit ludicrous. I suggest to Members that if the speed limit says you can go 35, you ought not have to pay a fine if you have stayed under that speed limit. That is essentially what this argument is all about. I urge Members to adopt the amendment and make this bill a better bill.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. NORWOOD], a member of the committee.

Mr. NORWOOD. Mr. Chairman, I rise to strongly support the Oxley-Burr amendment.

Mr. Chairman, I know the FDA is not perfect, I will admit that, but if we have to choose between the FDA and tort juries, the FDA is obviously better suited to make judgments as to what products should be on the market. This amendment is intended to prevent tort juries from second-guessing and overriding often very, very difficult but essential and scientific conclusions and risk-benefit assessments the FDA must make in approving a drug and deciding what warnings must and must not accompany a drug.

We must pass this amendment, Mr. Chairman, for the health of our Nation. When juries are permitted to punish defendants for conduct approved by the FDA, substituting their amateur scientific judgment and cost-benefit analysis for the judgment of the FDA's professional scientists, it makes drug

manufacturers very wary of producing new products.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. MCCOLLUM].

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

I rise to strongly support this amendment today. It is very clear from the work we did in the Committee on the Judiciary that this is essential. What we are talking about is only application to punitive damages and it is obvious that if a pharmaceutical company gets the approval of the Food and Drug Administration for a pharmaceutical product, then the Government has gone through about 12 years of processing to determine if that product is indeed sound and safe.

No product is 100 percent safe, but for gosh sakes if the FDA has approved it and sanctioned it, why should we be subjecting a pharmaceutical company to the threat of punitive damages for something that goes awry in that product that comes out later? We are only stifling the opportunity to develop the diversity of new products that we need for the health of America.

I urge in the strongest of terms that this amendment be adopted today. It is a good, sound exemption and safeguard for the pharmaceutical industry, for the health of the future of this country if we give this particular protection in those cases, those limited punitive damage cases where the FDA has approved a pharmaceutical product.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. COOLEY].

Mr. COOLEY. Mr. Chairman, before coming to Congress and being in the cattle business for a few years, I spent 10 years as director of regulatory affairs for an international pharmaceutical company. Our company literally spent millions and millions of dollars in complying with the FDA approval process. This process is the most rigorous process in the entire world to prove safety and efficacy of a drug. If we have no confidence in the FDA to do this, then we should find another agency to do this job for us.

As long as a company complies with the licensing requirements and continues the research after a drug is introduced on the market, I cannot believe that we can have punitive damages which should be only directed toward those companies who have reckless misconduct in the selling and administering of the drug. Currently prices of important drugs and medical devices are artificially high because of the cost of the liability insurance. Under this amendment plaintiffs still will have full compensation.

I urge passage of this amendment.

Mr. OXLEY. Mr. Chairman, I yield 30 valuable seconds to the gentleman from Ohio [Mr. CHABOT].

Mr. CHABOT. Mr. Chairman, I strongly support this amendment. It makes no sense to allow punitive damages against companies that have acted in good faith and gotten the FDA's approval. Most importantly, this amendment will help those who truly need help the most, those who need drugs which otherwise would probably not come on the market at all to relieve agonizing pain and those who need drugs which may preserve life itself.

The CHAIRMAN. The Chair will inform the committee that the gentleman from Ohio [Mr. OXLEY] is entitled to close debate.

PARLIAMENTARY INQUIRY

Mr. WATT of North Carolina. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. WATT of North Carolina. My inquiry has to do with why the gentleman on that side has the right to close debate. We are defending the committee position on this side this time.

The CHAIRMAN. If the Chair might respond to the inquiry, the gentleman from Ohio is the author of the amendment and there is no official committee position that is being represented here by opposition to the amendment. So the gentleman from Ohio is entitled to close debate on the amendment.

POINT OF ORDER

Mr. WATT of North Carolina. Mr. Chairman, I make a point of order.

The CHAIRMAN. The gentleman will state the point of order.

Mr. WATT of North Carolina. Mr. Chairman, I make this point of order, and I have already gone through this with the parliamentarian today.

The CHAIRMAN. The Chair is aware of that.

Mr. WATT of North Carolina. Any time that anyone makes a position that is contrary to the committee's position which in this case is the bill, and the amendment is contrary to the bill, I was told earlier today that whoever is defending the committee's position would be entitled to close.

The CHAIRMAN. In response to the gentleman's question, this amendment does not strike language from the bill at all.

Mr. WATT of North Carolina. Mr. Chairman, pursuing my point of order, the amendment on which I made the inquiry this morning did not strike any language from the bill. It was Mr. SCHUMER's amendment——

The CHAIRMAN. The Chair is not aware of exactly what amendment it was that was being discussed with the parliamentarian.

The gentleman may proceed.

Mr. WATT of North Carolina. I thank the Chair. I thought we had gotten to the point in this body that a Member cannot even make a point of order anymore.

The inquiry that I made this morning was on Mr. SCHUMER's amendment which struck nothing from the bill, and I was told at that time by the parliamentarian that any amendment that was contrary to the position, and it was presumed that the position of the bill was that it would not be amended at all, it would be the party that was defending the committee's position, which in this case is presumed to be the bill itself, not the amendment, that would be allowed to close.

The CHAIRMAN (Mr. DREIER). The Chair has perceived that the gentleman from Michigan [Mr. DINGELL] is not necessarily carrying the position of the committee.

The Chair will acknowledge that it is a difficult call, but that is the determination of the Chair.

PARLIAMENTARY INQUIRIES

Mr. FRANK of Massachusetts. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Are there any standards by which the Chair perceives? This is a very disturbing statement the Chair has just made.

The gentleman from Michigan is the ranking minority member, I believe, of one of the two committees of jurisdiction over this bill, and when we have had stated that there is nothing in the bill one way or the other, are we totally dependent——

The CHAIRMAN. The gentleman offers a very good parliamentary inquiry. The issue is addressed as follows:

It is the call of the Chair and it is the determination of the Chair that the gentleman from Michigan [Mr. DINGELL] does not represent the position of the committee. It is for that reason that it has been determined that the gentleman from Ohio [Mr. OXLEY], the author of the amendment, would be entitled to close debate on the amendment.

Mr. FRANK of Massachusetts. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, we have a very important point here, and I must say I am distressed by the tone of these rulings. By what standards can Members know how a chairman is going to divine whether or not someone represents the position of the committee? Is there no objective standard as to who represents the position of the committee when the ranking minority member defends the position of the committee? I would point out this amendment as I understand it was considered at least in one of the committees and rejected by one of the committees. What are the standards?

The CHAIRMAN. Under the rules of the House, the proponent of the amendment has the right to close unless the

committee position is being offered by another member.

Mr. FRANK of Massachusetts. I have further parliamentary inquiry, Mr. Chairman.

Anytime there is silence in the bill on an amendment, can we safely assume that the proponent of an amendment will then be allowed to close?

The CHAIRMAN. The Chair does not take that position.

Mr. FRANK of Massachusetts. Or does the chairman take the position whatever he wants will be the case and if he wants to give his party an advantage, he will do it?

The CHAIRMAN. The Chair has stated that the proponent of the amendment has the right to close unless the committee position is being represented by another Member.

Mr. FRANK of Massachusetts. But the question is, by what standard do you determine that? My parliamentary inquiry is, are there any standards by which you determine that? Or is it just arbitrary as it appears to be in this case?

The CHAIRMAN. There is not an absolute objective standard that exists for making that determination.

Mr. FRANK of Massachusetts. Is there a relative standard?

The CHAIRMAN. It is the prerogative of the Chair to make that determination and the Chair has determined that in this case, the proponent of the amendment, because a position of the committee is not being represented by another Member, has the right to close.

Mr. FRANK of Massachusetts. I have another parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, if the Chair decides to give partisan advantage, is there any recourse?

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. If the chairman decides then to simply follow partisan instincts, does the Member have any recourse?

The CHAIRMAN. This is the discretion of the Chair, and this is the ruling of the Chair.

Mr. WATT of North Carolina. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. WATT of North Carolina. My inquiry is, is the Chair expecting to consult with the parliamentarian? Because the parliamentarian clearly gave me this morning a completely contrary opinion. Is the Chair planning to consult with the parliamentarian?

The CHAIRMAN. It is the determination of the Chair that in this instance, the proponent of the amendment will close debate as the committee position is not being represented by another Member.

Mr. WATT of North Carolina. I have parliamentarian inquiry, Mr. Chairman.

My inquiry is, is the Chair planning to consult with the parliamentarian?

The CHAIRMAN. The Chair will consult with the parliamentarian. It is the determination, having consulted with the parliamentarian, that in this instance the gentleman from Ohio, the proponent of the amendment, has the right to close as the committee position is not being represented by another Member.

Mr. WATT of North Carolina. A parliamentary inquiry Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. WATT of North Carolina. Does the Chair have some psychic connection with the parliamentarian since nobody here has seen him consult?

The CHAIRMAN. That is not a parliamentary inquiry.

Mr. SENSENBRENNER. Regular order, Mr. Chairman.

The CHAIRMAN. The gentleman knows that is not a parliamentary inquiry.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding me time.

Mr. Chairman, I rise in strong support of the Oxley amendment as cochair of the bipartisan House Medical Technology Caucus.

Why in the world, Mr. Chairman, should any manufacturer be deemed malicious if it has complied with all regulations, reported all relevant information, and received FDA approval to market a product?

Mr. Chairman, let's quit stifling medical innovation. Let's quit stifling research and development, drugs and medical devices. Let's adopt the Oxley amendment.

Mr. Chairman, I rise in strong support of the Oxley amendment, as cochair of the bipartisan House Medical Technology Caucus. This amendment is needed because manufacturers are currently being forced to withhold life-saving drugs and medical devices rather than face unlimited liability.

Why in the world should any manufacturer be deemed malicious if it has complied with all regulations, reported all relevant information, and received FDA approval to market a product?

The FDA defense was originally in H.R. 917 and should be part of this important tort reform legislation. Let's quit stifling research and development in drugs and medical devices. Let's quit stifling medical innovation. Let's help those consumers and patients who need life-saving drugs and medical devices.

Let's adopt the Oxley FDA amendment.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from Indiana [Mr. MCINTOSH].

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Mr. MCINTOSH. Mr. Chairman, I rise in support of this amendment. It is vitally needed.

In talking with one of the leading medical device industry specialists, Mr. Dane Miller of Indiana, he has told me it is becoming extremely difficult if not impossible for that industry to provide lifesaving devices because of the threat of liability. The reason: I think liability risks are forcing the suppliers of raw materials, companies such as DuPont and Dow Chemical which have an outstanding record will not take the risk of providing the materials because of the threat of liability.

I urge Members to vote in favor of this amendment.

Mr. OXLEY. Mr. Chairman, may I inquire how much time I have remaining?

The CHAIRMAN. The gentleman from Ohio [Mr. OXLEY] has 2 minutes remaining, and the gentleman from Michigan [Mr. DINGELL] has 3 minutes remaining.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from North Carolina [Mr. HEINEMAN].

Mr. HEINEMAN. Mr. Chairman, the FDA defense is simple and it is fair. If the Food and Drug Administration approves a drug, then the pharmaceutical company which manufactures that drug should not be liable for punitive damages.

Currently the fear of unnecessary litigations stifles innovations and limits the types of drugs which are available to the American consumer. Without the FDA defense, beneficial drugs will be driven out of the marketplace and manufacturers will continue to be discouraged from developing new drugs to treat illnesses such as AIDS and cancer. I urge my colleagues to support the amendment.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes, my remaining time, to the distinguished gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time. He has worked on this matter for many years, and I have noted his change of position, his reluctance now to allow FDA approval to reign superior in this instance; we now have those who are seeking this amendment, many of them are at the same time holding FDA in a suspended state of animation, which could result in an important diminution of its powers and resources and ability to do the job.

I have heard it said here on the floor several times, if there are ways to improve the FDA's ability to get the job done, then let us do it. But we may be going in the opposite direction. As badly as the FDA needs support, the problem right now is whether it is going to be able to continue funding at its present level.

So I rise in clear opposition to an amendment which will ultimately have the effect of immunizing manufacturers of defective products who happen to obtain FDA approval.

This amendment would provide a complete defense to liability for any

drug or medical device that received premarket approval from the FDA. In other words, if the FDA for whatever reason allows a defective product on the market, the victims would not be able to sue at all. Even if both the manufacturer and the FDA have evidence of the dangers of a product but permitted it to be marketed anyway, the innocent, injured victim would be left without any opportunity for compensation whatsoever.

Do the authors of this amendment really want us to place that much faith in an underfunded Federal regulator?

It goes without saying that the amendment would have a disproportionate impact on the ability of women in particular to recover punitive damages which could occur from grossly negligent conduct, since many of the cases that involve large awards involve defective medical products placed inside women's bodies, the very products likely to need FDA approval.

These are products such as the Dalkon Shield, the Cooper-7 IUD device, high-absorbency tampons linked to toxic shock syndrome and silicone breast implants. For each of these products, the manufacturer had information indicating the dangers posed by the product.

So join me and the gentleman from Ohio in opposing this amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. OXLEY] is recognized for 1½ minutes to close debate.

Mr. FRELINGHUYSEN. Mr. Chairman, I strongly support this amendment which will strengthen H.R. 956, the Common Sense Product Liability and Legal Reform Act and address what I see as a deterrent to research and development of lifesaving pharmaceuticals and medical devices.

The out-of-control tort situation in our country is forcing companies that research and develop medical equipment and lifesaving drugs to back away from developing important new treatments for diseases such as AIDS or cancer.

The United States has the most rigorous drug and medical device approval process in the world. Companies which research and develop new medical treatments spend millions, sometimes billions of dollars, on developing and testing these products in order to meet FDA standards and approval, before they are able to make these important products available to the public. In addition to the money spent, the time involved with the process of FDA approval can take up to 10 years.

The proposed limitation on punitive damages makes sense. Even when every effort is made to ensure the safety and efficacy of the drug for the illness or condition it is designed to treat, no drug is 100 percent risk free. The FDA recognizes this and in making its approval decision must weigh the risks and benefits of each new pharmaceutical in order to minimize, if not eliminate, risk of injury. If injury does occur, despite all the companies research and the government's review, and the manufacturer has complied with all relevant federal requirements, it should not then be held liable for "punitive damages."

Without this amendment, there remains a powerful disincentive to certain types of pharmaceutical research. Enacting the government-standards defense will encourage new research and development.

I am pleased to support this amendment which I believe offers a fair balance of protection for consumers and businesses alike.

Mr. ROEMER. Mr. Chairman, I rise today to support the amendment to H.R. 956 offered by the gentleman from Ohio [Mr. OXLEY]. This amendment will bar punitive damages for the sale or manufacture of drugs or devices which have been approved by the Food and Drug Administration.

Our medical device and pharmaceutical companies must be able to continue to pioneer life-saving, cost-effective products. The explosion of litigation and the skyrocketing costs that are attendant to such lawsuits are in great part responsible for the high costs of healthcare in the United States. They also dampen our enthusiasm for innovative and breakthrough research that produces products that enhance our quality of life. This amendment would produce a "government standards" defense where companies that adhere to strict government regulations designed to preserve safety would not be held liable for punitive damages involving a product.

New medicines and medical devices increase life expectancy and make life better for those who need it most: people afflicted with disease or people with disabilities. Our approval process for these items is the most stringent in the world, and require huge investments of funding and human resources. The testing process is rigorous and complete. Clinical trials are exhausting. Paperwork substantiating these processes usually runs 100,000 pages or more for a single product.

Clearly the decision to allow such products on the market prove that their benefits outweigh any risk that may be involved. Punitive damages were designed to punish businesses or individuals for willfully negligent or harmful behavior. Companies that submit products for FDA review do not do so in bad faith.

Mr. Chairman, in my Indiana District we are the home of three important producers of biomedical products. The Biomet, Zimmer and DePuy Corporations are the makers of orthotic and prosthetic devices that are critical to the health and well-being of people throughout the world. They invest constantly in improving their products, and in turn create good jobs and contribute heavily to our trade balance. The work they do is only for the common good, and their contribution to modern health and quality of life must be acknowledged in this legislation.

This amendment provides a level of protection for these companies while protecting the rights of individuals to seek damages for expenses, pain or suffering. I commend the gentleman from Ohio for offering this measure and encourage my colleagues to support this important provision.

Mr. OXLEY. Mr. Chairman, this has been a very worthwnile debate. I am only sorry we did not have more time. This has been a worthwhile and edifying debate.

Let me conclude by answering some questions that have been raised during the debate and particularly from some conversations I have had with my good friend from New York, Mr. TOWNS, as to what this amendment does or does not do.

First of all, this amendment applies only to punitive damages. Second, the amendment does not cap noneconomic damages in any way, so that the plaintiff would be entitled to receive economic and noneconomic damages; only punitive damages would not be permitted.

Thirdly, the FDA is the agency we rely on to regulate food and drug purity and the only agency authorized to give premarket approval.

This amendment encourages innovations, it protects consumers and it makes good common sense.

Mr. Chairman, this was a bipartisan effort on this amendment, and we think it goes to the heart of the entire process of approving medical devices and drugs. It is in the best interests of our consumers and of our constituents that we have a system that we can rely on and that provides adequate protection against voracious punitive damage awards against drug companies or other manufacturers of medical products.

The Oxley bipartisan amendment is an amendment that all Members can and should support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. OXLEY].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 10 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HOKE

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

The CHAIRMAN. The Clerk will designate the amendment.

Amendment offered by Mr. HOKE: Page 19, redesignate section 202 as section 203 and insert after line 19 the following:

SEC. 202. DEPOSIT OF DAMAGES.

If punitive damages of more than $250,000 are awarded in a civil liability action, 75 percent of the amount of such damages in excess of $250,000 shall be deposited—

(1) if the action was in a Federal court, in the treasury of the State in which such court sits, and

(2) if the action was in a State court, in the treasury of the State in which such court sits.

This section shall be applied by the court and shall not be disclosed to the jury.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio [Mr. HOKE] will be recognized for 10 minutes and a Member in opposition to the amendment will be recognized for 10 minutes.

The Chair recognizes the gentleman from Ohio [Mr. HOKE].

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

Mr. Chairman, this punitive damages amendment is fairly simple and straightforward. What it does is it restores the original intent of punitive

damages awards which is namely to punish wrongdoers, it is not to compensate plaintiffs.

Every day in courtrooms across America, plaintiffs are compensated for lost wages, for medical and rehabilitation costs, loss of the use of property, emotional distress, injury to their reputation, humiliation, and loss of companionship or consortium. These are the awards that are intended to make the defendant whole or complete. These are compensatory awards.

But in addition to these economic and noneconomic damages, plaintiffs are receiving themselves windfalls that were never meant to play part in making them whole. This windfall comes in the form of punitive damages that by their very definition are intended to be punishment for wrongdoing defendants. This punishment is intended to deter future wrongdoing.

The key to a fine's effectiveness is not who receives it but who is forced to pay. That is why I am proposing that 75 percent of punitive damages in excess of $250,000 be paid to the State in which the action is litigated. In other words, plaintiffs will still receive 100 percent of any punitive damages up to $250,000 and will receive 25 percent of any amount awarded in excess of $250,000.

I believe this arrangement strikes a very good balance between maintaining the plaintiff and the plaintiff's attorney's incentive to seek punitive damages, and emulating the model of a criminal fine.

This amendment also stipulates that the arrangement is to be applied by the court and is not to be disclosed to the jury. This provision safeguards against juries using punitive damages to finance State initiatives in a way that would improperly bias their outcome.

Ten States have adopted laws sending a portion of punitive damages to their State for a variety of purposes. The Georgia Supreme Court has upheld its law sending a portion of punitive damage awards directly to the State.

This has broad support, Mr. Chairman. It is supported by people from former Attorney General Griffin Bell to the State legislatures of 10 States across this country.

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

The CHAIRMAN. Is there a Member who wishes to manage the opposition to the Hoke amendment? Does the gentleman from Michigan [Mr. CONYERS] wish to manage the opposition to the Hoke amendment?

Mr. CONYERS. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 10 minutes.

PARLIAMENTARY INQUIRY

Mr. CONYERS. Mr. Chairman, on a point of procedure, would I have the right to close on this since this is an amendment against the bill?

The CHAIRMAN. As a member of the reporting committee, the gentleman has the right to close.

Mr. CONYERS. Mr. Chairman, I yield myself 3½ minutes.

Mr. Chairman, this amendment continues chipping away at the entire concept of punitive damages by reducing punitive damages over $250,000 by an additional 75 percent and giving it to the Federal or State treasury rather than to the individual who sued.

Do State treasuries want these awards? New York said, "No thanks," and repealed its apportionment law. In Colorado, the supreme court held that giving punitive awards to a State fund was an unconstitutional "taking."

Who benefits? The corporations who will simply build economic damages into their costs of doing business, without fear of facing large punitive damages that would have deterred them from knowingly selling products that cause devastating injury to the buyer.

Who loses? Those at the lower end of the economic scale who will have less incentive to sue, especially when their recovery is determined by how much they earn rather than the outrageousness of the defendant's conduct.

Some Members on the other side will argue that punitive damages should punish wrongdoers and are not intended to compensate plaintiffs, but they should know better. Lawsuits brought by victims, not Government regulation, brought about safety improvements like restricting asbestos use, like beepers on reversing garbage trucks that had resulted in numerous injuries to children, like recalling the Dalkon Shield. Punitive damages put an end to the exploding fuel tank and the heart by-pass drug that resulted in amputation caused by gangrene.

The likely result if this amendment passes is more dangerous products on the market and less incentive for the victims to sue, a prospect that does not advance the common good but will only please the sponsors of this Contract with Corporate America.

□ 1800

Please reject the Hoke amendment.

Mr. HOKE. Mr. Chairman, I point out once more, while we are talking about our punitive damages, not compensatory damages, compensatory damages are already paid to compensate a victim for his economic and noneconomic losses.

Mr. Chairman, at this time I yield 1 minute to the gentleman from Illinois [Mr. HYDE], the chairman of the committee.

Mr. HYDE. I thank the gentleman for yielding this time to me.

Mr. Chairman, the amendment offered by the gentleman from Ohio [Mr. HOKE] provides for 75 percent of punitive damages awards in excess of $250,000 to be deposited to the treasury of the State in which the particular Federal or State court sits. Since punitive damages are limited under Section 201(b) to $250,000 or 3 times the damages awarded for economic loss—whichever is greater—punitive damages can exceed $250,000 only if the damages for economic loss exceed $83,333.33. I support this proposal because it effectuates the public interest in allowing large punitive damages awards to benefit the appropriate State without either compromising the rights of claimants to full compensation for injuries sustained or eliminating incentives to seek punitive damages.

Punitive damages are designed to punish or deter egregious misconduct—in contrast to compensatory damages that compensate claimants for both economic and non-economic losses. Compensatory damages cover such monetary items as medical expenses and lost wages and such non-monetary items as pain and suffering. Claimants who are fully compensated for both monetary and non-monetary losses receive windfalls when they also collect punitive damages. It makes eminent good sense for punitive damages to be allocated for public purposes—which essentially is what we accomplish by directing such funds to state treasuries. The States in turn can decide on the best uses to be made of these funds.

Although in theory all of these awards should go to the appropriate State, we recognize the practical need to retain incentives for claimants to seek such awards. For that reason, the amendment leaves untouched State law schemes that allow claimants to collect punitive damages up to $250,000. The claimant's share of amounts in excess of $250,000 will equal 25 percent provided the law of the particular State permits the claimant to collect it. The amendment includes sufficient incentives for claimants to continue seeking punitive damages in appropriate cases while recognizing the public interest in retaining benefits from large punitive damages awards.

The amendment is meritorious and represents a positive contribution to this legislation.

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

Mr. NADLER. I thank the gentleman for yielding this time to me.

Mr. Chairman, I recognize the intention of the gentleman from Ohio [Mr. HOKE]. I had a similar amendment, similar but different, in committee, which I am sorry that the Committee on Rules did not make in order.

The purpose of punitive damages, the main purpose, is to deter, to deter egregious, terrible conduct. When we are dealing with a malefactor of great wealth, as the Republican President once put it, you need a large punitive award.

But why should the individual victim be unjustly enriched just because the tort feasor was a very wealthy individual or a big corporation.

So I do not mind the limit of $250,000 or 3 times the economic damage,

whichever is greater, as the recovery for the victim. But that will totally limit the deterrent effect against the large tort feasor.

So I suggested let the victim get the $250,000 or 3 times economic damage, whichever is greater, and let government, for deficit reduction, get any award in excess of that.

So you still get the deterrent effect, but not unjust enrichment.

The gentleman from Ohio turned it around, and he says let us give 75 percent to the government of the excess over $250,000 below 3 times economic damages. So if the economic damage was $400,000, 3 times economic damages would be $1.2 million. Mr. HOKE says limit what the victim gets to $250,000 plus a quarter of that difference.

So this is reducing below what the bill said the possible recovery is. I think this is wrong because the victim is entitled to some reasonable recovery of punitive damages in relation to economic damages.

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

Mr. NADLER. I yield to the gentleman from Ohio.

Mr. HOKE. I thank the gentleman for yielding.

Mr. Chairman, I ask the gentleman, is it not true what his amendment would have done would have been to eliminate the cap on punitive damages?

Mr. NADLER. Yes. Reclaiming my time, that is exactly the point. There should not be a cap on punitive damages necessary as a deterrent but to avoid unjust enrichment. I can understand the cap on the recovery to the victim. But to cap the total award and then to say underneath that cap we are going to say the victim cannot get it all, that I think is wrong to the victim and does not provide an adequate deterrent to the tort feasor.

Mr. HOKE. Would the gentleman not agree that it is true that we just rejected that concept by rejecting soundly the First Amendment in this Congress? We just rejected that idea.

Mr. NADLER. Well, I think the majority is wrong.

Mr. HOKE. But we had a vote on what the gentleman wanted.

Mr. NADLER. But what the gentleman is doing goes further. What the gentleman is saying is the cap of 3 times economic damages $250,000, and we are going to deny part that have to the victim.

If you want to say we should not have any cap at all, then it makes sense to say to the victim he should not unjustly enrich himself to any extent.

I urge defeat of the amendment.

Mr. HOKE. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the gentleman for yielding and commend him for what I think is a very good amendment.

In fact, it is an amendment that helps to cure one of the objections raised on the other side to the fact that there is a cap on punitive damages. The cap is important in order to keep juries from becoming legislators. They are not elected. They do a very good job of resolving disputes between individuals, but when you have multimillion-dollar awards, you have a problem with juries imposing rules on society that ought to be imposed by State legislatures.

In this case, you are now dealing with the problem that they observe once you impose the cap, and that is that it is discriminatory because they said somebody with a very wealthy background might have high economic losses, they got 3 times that and recover far more than somebody with a poorer background who could only have a $250,000 cap.

So I compliment the gentleman because he is saying that everybody up to $250,000 is equal. Once you get beyond $250,000, we have gone already beyond the purpose of punitive damages. They are not to reward an individual or even compensate an individual for loss they get from the economic loss and the noneconomic loss.

That is medical bills that they are entitled to be reimbursed for, lost income, pain and suffering, all of that is not affected by punitive damages.

So, by saying that 75 percent of the amount above $250,000 will go to the public treasury where it should go because it is, in effect, a fine is a very good idea. And that is exactly the parallel to fines.

The standard for punitive damages is a very high one. It is only for people who do serious wrong.

So when we impose a fine on people and it is a serious wrong meeting a high standard, it ought to go into that public treasury just as a fine imposed on a criminal wrongdoer.

That was exactly the point made by former Supreme Court Justice Lewis Powell, who said that the private windfall aspects of punitive damages aggravates the problems that we have with the whole rack of standards in punitive damages because, unlike fines, which go to the public treasury, punitive damages go to the private plaintiffs. To a limited extent, that is fine, and your bill does it. Beyond that, it goes into the public treasury.

I commend the gentleman for a very good amendment.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Virginia [Mr. SCOTT], a member of the Committee on the Judiciary.

Mr. SCOTT. Mr. Chairman, we keep hearing these generalities about excessive awards, but we do not hear specific cases that outraged juries so much that they actually awarded punitive damages.

We have to put this amendment in the context of the other amendments that we have already had and recognize punitive damages are designed to be high enough to protect society from a corporate calculation that it is easier to pay the damages for somebody injured, maimed or killed, than it is to correct the situation.

Earlier today we talked about the situation with flammable pajamas where the court found that the corporation knew that the pajamas—that newsprint burned only slightly faster than the pajamas. Because of the punitive damages, children can now go to bed safely knowing they are not wearing these things.

In the context of loser pays and a separate trial for punitive damages, this amendment would essentially remove any incentive that a plaintiff would have to go after punitive damages, thereby removing the safety valve that others will enjoy by virtue of the fact that corporations are afraid of these punitive damages. The loser pays, you can win the case, on the compensation, you could even win punitive damages. But if you come in under the offer, you end up paying your attorneys' fees, the other peoples' attorneys' fees, and you are therefore discouraged from bringing these cases.

This amendment is another discouragement in protecting society from corporate wrongdoing and ought to be defeated.

Mr. HOKE. Mr. Chairman, I would just like to respond to the last speaker by saying that clearly when you still have a $250,000 amount of money, I do not know why that is not considered to be an incentive, not to mention that in terms of criminal fines that is a tremendous fine. If somebody is fined for criminal negligence or felonious activity, a $250,000 fine is disproportionate to almost anything you will find in a State legislature's code of criminal penalties.

Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BILBRAY].

Mr. BILBRAY. I thank the gentleman for yielding this time to me.

Mr. Chairman, frankly, I think if you tried to explain this to the average citizen in the United States, they would think it is absurd that somebody is going to be given a fine and that fine is going to be given to the plaintiff. With fines and forfeitures in criminal cases, we do not have those fines and forfeitures going to the victim of the crime. That may be more logical than what we have here because at least in the criminal case they have not been made whole.

By definition, they should have been made whole before punitive is ever considered.

I think what we have to do is get the lottery out of this. I would ask that we support this amendment. I would prefer

that all punitive damages go to a public fund because that is where penalty fees should be going. They go to a public fund in a criminal case. By definition, they should be going to such a fund.

Mr. HOKE. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. Mr. Chairman, I rise in strong support of this amendment.

I think the concept has oft been repeated today about compensatory and punitive damages and the purposes of each. Clearly, we have established today that punitive damages are to punish and deter. We have a parallel concept in the criminal code when we have restitution and fines. In that instance, the court may award restitution; that is to the victim of the crime. But the fine that they punish that criminal with goes to the State.

In the instance of the civil justice system, punitive damages are used in a civil case to deter conduct. In our civil justice system, punitive damages are used to deter conduct for the good of society as a whole. Under those circumstances it is only right that society as a whole should reap the benefit of the punitive damages. For that reason I strongly support and commend the gentleman from Ohio for his amendment.

Mr. HOKE. I thank the gentleman for those kind words.

I will close with two thoughts. First of all, I want to thank the gentleman from California [Mr. BILBRAY] for wanting to speak on this subject. He has been walking around with pneumonia for 3 days. He felt so strongly enough, he said he wanted to come down and speak on this, and I think that says a great deal.

Mr. Chairman, this is not a far-fetched amendment, by any means. What you are going to hear from the other side is somehow this is taking rights away, money away, dollars away from people. Nothing could be further from the truth than that.

□ 1815

The fact is that a punitive damage award is meant to take the place of a criminal fine. We are saying that the first $250,000 of that can go to the victim. After that, it still goes 25 percent to the victim and 75 percent to the State. It was never intended to make a plaintiff whole. We have already done that with economic and noneconomic compensatory damages. That is not what this is intended to do, never has been, never will be. But what we have to do is we need to put the money back to the State. That is where criminal fines go. That is where this, the punitive damage awards should go.

That is what this bill is all about; it is a common sense balancing approach to this problem.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. CONYERS] for 1½ minutes to close debate.

Mr. CONYERS. Members of the Committee, we have seen a chipping-away effect that has now reached the point that I think Members on the other side will begin to be repelled by it. The entire concept of punitive damages are now being reduced by an additional 75 percent when they exceed $250,000 by giving it to the Federal or State treasury rather than to the individual who sued.

When is this going to end? What reason does a person have to come into court with a lawyer, to risk his all, under the accentuated costs and risks that he must not attend, and then, if he recovers, it goes not to him, but it goes to the State or to the Federal Government itself? What kind of nationalistic scheme are we talking about?

I say to my colleagues, "You don't have to be a supporter of states rights to take exception to this."

Where will we draw the line? What are we doing? Has each citizen become an apparatchik for the State even when he or she goes to court and recovers?

The New York State court has said "no," the Supreme Court of Colorado has said "no," and now we should say "no" to the gentleman from Ohio [Mr. HOKE].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. HOKE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 265, not voting 7, as follows:

[Roll No. 224]

AYES—162

Andrews
Archer
Armey
Baker (CA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bereuter
Bevill
Bilbray
Bliley
Boehner
Bonilla
Browder
Brownback
Bryant (TN)
Bunn
Buyer
Calvert
Camp
Chenoweth
Christensen
Chrysler
Coburn
Collins (GA)
Condit
Cox
Crane
Cremeans
Cunningham
Deal
DeLay
Doggett
Doolittle
Dornan
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Ewing
Fawell
Fields (TX)
Flanagan
Fowler
Frisa
Funderburk
Gallegly
Ganske
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Goss
Greenwood
Gunderson
Gutknecht
Hancock
Hastert
Hastings (WA)
Hefley
Heineman
Hilleary
Hobson
Hoke
Hostettler
Houghton
Hunter
Hyde
Inglis
Jacobs
Johnson, Sam
Jones
Kanjorski
Kasich
Kim
Kingston
Klug
Knollenberg
Kolbe
LaFalce
Laughlin
Leach
Lewis (KY)
Lincoln
Linder
Luther
Maloney
Martinez
McCollum
McCrery
McInnis
McKeon
McNulty
Metcalf
Mica
Miller (CA)
Miller (FL)
Moorhead
Neumann
Norwood
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Pomeroy
Porter
Portman
Pryce
Regula
Roberts
Rogers
Rohrabacher
Roth
Royce
Sabo
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schumer
Seastrand
Sensenbrenner
Shaw
Shuster
Skeen
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stenholm
Stump
Talent
Tanner
Tauzin
Taylor (NC)
Thomas
Thornberry
Thurman
Towns
Upton
Vucanovich
Walker
Watts (OK)
Weldon (FL)
Weller
Williams
Wolf
Young (FL)
Zimmer

NOES—265

Abercrombie
Ackerman
Allard
Bachus
Baesler
Baker (LA)
Baldacci
Barcia
Barrett (WI)
Bass
Bateman
Becerra
Beilenson
Bentsen
Berman
Bilirakis
Bishop
Blute
Boehlert
Bonior
Bono
Borski
Boucher
Brewster
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunning
Burr
Burton
Callahan
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Combest
Conyers
Cooley
Costello
Coyne
Cramer
Crapo
Danner
Davis
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Dooley
Doyle
Duncan
Durbin
Edwards
Engel
Ensign
Eshoo
Evans
Everett
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Foley
Ford
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gekas
Gephardt
Gilman
Gonzalez
Gordon
Graham
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamilton
Hansen
Harman
Hastings (FL)
Hayes
Hefner
Herger
Hilliard
Hinchey
Hoekstra
Holden
Horn
Hoyer
Hutchinson
Istook
Jackson-Lee
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaHood
Lantos
Largent
Latham
LaTourette
Lazio
Levin
Lewis (CA)
Lewis (GA)
Lightfoot
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Manton
Manzullo
Markey
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McHale
McHugh
McIntosh
McKinney
Meehan
Meek
Menendez
Meyers
Mfume
Mineta
Minge
Mink
Moakley
Molinari
Mollohan
Montgomery
Moran
Morella
Murtha
Myers
Myrick
Nadler
Neal
Nethercutt
Ney
Nussle
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor

Payne (NJ)	Scott	Tucker
Pelosi	Serrano	Velazquez
Peterson (FL)	Shadegg	Vento
Pickett	Shays	Visclosky
Poshard	Sisisky	Volkmer
Quillen	Skaggs	Waldholtz
Quinn	Skelton	Walsh
Radanovich	Slaughter	Wamp
Rahall	Smith (NJ)	Waters
Ramstad	Spratt	Watt (NC)
Reed	Stark	Waxman
Reynolds	Stearns	Weldon (PA)
Richardson	Stockman	White
Riggs	Stokes	Whitfield
Rivers	Studds	Wicker
Roemer	Stupak	Wilson
Ros-Lehtinen	Tate	Wise
Rose	Taylor (MS)	Woolsey
Roukema	Tejeda	Wyden
Roybal-Allard	Thompson	Wynn
Rush	Thornton	Yates
Sanders	Torkildsen	Young (AK)
Sawyer	Torres	Zeliff
Schiff	Torricelli	
Schroeder	Traficant	

NOT VOTING—7

Cubin	Hayworth	Ward
Forbes	Rangel	
Gibbons	Tiahrt	

□ 1838

Messrs. ZELIFF, TATE, BUNNING of Kentucky, BREWSTER, HANSEN, VENTO, BONO, BARCIA, DICKS, KENNEDY of Massachusetts, OBERSTAR, CALLAHAN, WAMP, MONTGOMERY, CHAMBLISS, EVERETT, and SISISKY, and Ms. BROWN of Florida changed their vote from "aye" to "no."

Messrs. PAYNE of Virginia, PAXON, GREENWOOD, McINNIS, McCRERY, and DORNAN changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 11, printed in House Report 104–72.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. COX of California:

Page 1, strike line 7 and all that follows through the matter that precedes line 1 on page 2, and insert the following:

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purposes.

TITLE I—PRODUCT LIABILITY REFORM

Sec. 101. Applicability.
Sec. 102. Liability rules applicable to product sellers.
Sec. 103. Defense based on claimant's use of intoxicating alcohol or drugs.
Sec. 104. Misuse or alteration.
Sec. 105. Frivolous pleadings.
Sec. 106. Several liability for noneconomic loss.
Sec. 107. Statute of repose.
Sec. 108. Definitions.

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS

Sec. 201. Treble damages as penalty in civil actions.
Sec. 202. Limitation on additional payments beyond actual damages.
Sec. 203. Fair share rule for noneconomic damage awards.
Sec. 204. Definitions.

TITLE III—BIOMATERIALS SUPPLIERS

Sec. 301. Liability of biomaterials suppliers.
Sec. 302. Procedures for dismissal of civil actions against biomaterials suppliers.
Sec. 303. Definitions.

TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

Sec. 401. Application limited to interstate commerce.
Sec. 402. Effect on other law.
Sec. 403. Federal cause of action precluded.
Sec. 404. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the civil justice system, which is designed to safeguard our most cherished rights, to remedy injustices, and to defend our liberty, is increasingly being deployed to abridge our rights, create injustice, and destroy our liberty;

(2) our Nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly, and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy;

(3) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services;

(4) the rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the several States, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce;

(5) as a result of excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the national market, and from excessive liability costs passed on to them through higher prices;

(6) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability jeopardize the financial well-being of many individuals as well as entire industries, particularly the Nation's small businesses, and adversely affects governments, taxpayers, nonprofit entities and volunteer organizations;

(7) the excessive costs of the civil justice system undermine the ability of American companies to compete internationally, and serve to decrease the number of jobs and the amount of productive capital in the national economy;

(8) the unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, and individuals to protect their liability with any degree of confidence and at a reasonable cost;

(9) because of the national scope of the problems created by the defects in the civil justice system, it is not possible for the several States to enact laws that fully and effectively respond to those problems;

(10) it is the constitutional role of the national government to remove barriers to interstate commerce; and

(11) there is need to restore rationality, certainty, and fairness to the civil justice system in order to protect against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

(b) PURPOSES.—Based upon the powers contained in Article I, Section 8, Clause 3 of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce by—

(1) establishing certain uniform legal principles of product liability which provide a fair balance among the interests which provide a fair balance among the interests of product users, manufacturers, and product sellers;

(2) placing reasonable limits on damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in civil actions;

(4) reducing the unacceptable costs and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; and

(5) establishing greater fairness, rationality, and predictability in the civil justice system.

Page 2, strike line 3 and all that follows through line 24, and page 4 (and redesignate subsequent sections accordingly).

Page 11, strike lines 17 through 24 (and redesignate subsequent sections accordingly).

Page 12, strike line 24 and all that follows through line 2 on page 13 (and redesignate the subsequent section accordingly).

Page 17, strike lines 10 through 12 and insert the following:

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS

SEC. 201. TREBLE DAMAGES AS PENALTY IN CIVIL ACTIONS.

Page 17, line 21, insert "rights or" before "safety".

Page 17, beginning in line 25, strike "for the economic loss on which the claimant's action is based" and insert "for economic loss".

Page 18, insert after the period in line 2 the following: "This section shall be applied by the court and shall not be disclosed to the jury.".

Page 18, line 3, strike "AND PREEMPTION".

Page 18, strike "title" in lines 4 and 6 and insert "section".

Page 18, beginning in line 7, strike "in any jurisdiction that does not authorize such actions" and insert after the period in line 8 the following: "This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages.".

Page 19, after line 19, insert the following new sections (and redesignate the subsequent section accordingly):

SEC. 202. FAIR SHARE RULE FOR NONECONOMIC DAMAGE AWARDS.

(a) FAIR SHARE OF LIABILITY IMPOSED ACCORDING TO SHARE OF FAULT.—In any product liability or other civil action brought in State or Federal court, a defendant shall be liable only for the amount of noneconomic damages attributable to such defendant in direct proportion to such defendant's share of fault or responsibility for the claimant's actual damages, as determined by the trier of fact. In all such cases, the liability of a defendant for noneconomic damages shall be several and not joint.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any product liability or other civil action

brought in any Federal or State court on any theory where noneconomic damages are sought. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the application of the theory of joint liability to any kind of damages.

Page 19, after line 21, insert the following new paragraph:

(1) The term "actual damages" means damages awarded to pay for economic loss.

Page 19, line 22, strike "(1)" and insert "(2)".

Page 20, line 4, strike "(2)" and insert "(3)".

Page 20, line 12, strike "(3)" and insert "(4)".

Page 20, line 18, strike "(4)" and insert "(5)".

Page 20, after line 20, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(6) The term "noneconomic damages" means damages other than punitive damages or actual damages.

Page 20, line 21, strike "(5)" and insert "(7)".

Page 21, line 1, strike "(6)" and insert "(8)".

Page 30, strike lines 6 and 7, and insert the following:

TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 401. APPLICATION LIMITED TO INTERSTATE COMMERCE.

Titles I, II, and III shall apply only to product liability or other civil actions affecting interstate commerce. For purposes of the preceding sentence, the term "interstate commerce" means commerce among the several States or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation.

Redesignate subsequent sections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. COX] and a Member opposed will each be recognized for 20 minutes.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. FRANK of Massachusetts. As a member of the reporting committee, I wonder, by whatever process of mental divination the Chair uses, if he would decide that I had the right to close on this.

The CHAIRMAN. The gentleman is correct, he will have the right to close.

Mr. FRANK of Massachusetts. I thank the Chair.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, the tenor of the debate on this entire bill and all of the amendments to this bill is pretty clear: We have too many lawsuits in America. We have become too litigious. It costs too much money, and simple justice is not being served.

The amendment that I am proposing, along with my colleague, Mr. PETE GEREN from Texas, advances a simple rule that will go a long way to making sure that fair justice exists once again in our courts. Our simple rule is called the fair-share rule.

Under this provision, a person will be made to pay for the damages that he, she, or it caused, but no person will be made to pay for damages that someone else caused. Our rule will hold wrongdoers responsible for their actions, and our rule will permit people who are not responsible for that damage to understand that their conduct will have been rewarded faithfully by the law.

The so-called joint and several liability doctrine is really the fair-share rule stood on its head. If you are adjudged 1 percent liable, you can be required to pay under the current system 100 percent of the damages caused by someone else if it turns out that you are the only one in the picture that has any money. It is known to plaintiffs' trial lawyers as the deep-pockets opportunity. Find somebody, not necessarily a rich person, perhaps just a small business person or an individual who has an insurance policy, who you think can therefore be made to pay, or just from whom a settlement can be extorted, and bring them into the lawsuit.

Take the case of a drunk driver going down the street, goes off the sidewalk onto the front lawn and kills someone. If that person is sued and the jury were to find, and this is approximately the facts in a real case in California, the jury finds that the drunk driver is 95 percent liable for the damage that the drunk driver caused, but the city is 5 percent liable because there was a pothole on the way, and the drunk driver does not have any money, then the taxpayers are stuck for all of the damage caused by the drunk.

□ 1845

That is our current system. Under the fair share rule, someone adjudged 5 percent liable will pay 5 percent of the damage. That is the fair share rule.

I urge support for this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes and 30 seconds to the gentleman from Michigan [Mr. CONYERS], the ranking member of the full Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding time to me.

We are confronted with a very strange amendment here, because what has not been mentioned by the author of it is that it seeks to exclude foreign manufacturers from the service of process requirement that American manufacturers are subject to. And so members of the committee, we are back to the same amendment on the other end that we voted only a few hours ago, where we said that a foreign manufacturer was subject to the same discovery proceedings that a national manufacturer, a domestic manufacturer is subject to.

We said that we should not be able to have them avoid litigation because their discovery may take them to Europe or to Japan, that they must subject themselves to discovery. And this amendment, although strangely enough it has not been said yet, and you are going to have to read pretty carefully to find it anywhere, is that this is going to change the service of process in suits brought against foreign manufacturers.

It is another way to let them out of playing the game on a level playing field with domestic manufacturers.

I think we all know what some of them are doing. They sell their goods, freight on board, in Japan or Germany, just so they will not be treated as having contacts in this country which could subject them to suit there. They know that this makes U.S. citizens go through repeated hurdles to bring suit against them, ranging from translating the complaint into another language and asking the State Department to serve action, and even then the foreign business may elect to ignore the action.

This is another backdoor way of giving a foreign manufacturer a leg up. To make sure that everybody knows what the gentleman is doing, I do not know why the gentleman did not just come out, the gentleman from California did not just come out and say what this is going to do. It is going to change the way service of process is implemented by a foreign manufacturer, and that is just the front door way of getting around the discovery amendment that would have given them a break that we just rejected.

Why do you want to give different rules in court to foreign companies? What benefit do you see in that? I know there are a lot of foreign companies here, but do you not see, my friend, that citizens that are sued and want to sue will need to have service of process. And if you try to take this out, we are going to be doing ourselves a grave disservice to all of our constituents?

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

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

Mr. COX of California. Mr. Chairman, the gentleman makes a very fair point. In fact, the effect of the gentleman's just having won on his amendment is that the provisions of this amendment that would otherwise have dealt with service of process will have no effect. The gentleman has carried the day, and the gentleman's amendment will in fact be successfully included in this bill.

Mr. CONYERS. Reclaiming my time, the current language in this bill is

carefully balanced. It offers a carrot and a stick. The end result is a substantially more balanced playing field.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. My sense would be, in most parliamentary situations, that the last enactment would supersede the previous one. So the notion that by a prior action we could somehow control a subsequent action is a dubious proposition at best. The gentleman has got a drafting problem. He cannot solve it by something that we did a couple of hours ago, because by a subsequent action we would be deemed to have amended or modified the previous action.

Mr. CONYERS. Mr. Chairman, this amendment strikes a blow against U.S. citizens, the same as the other discovery amendment tried to do.

Mr. COX of California. Mr. Chairman, I yield 3 minutes to the gentleman from Texas, Mr. PETE GEREN.

Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from California.

Mr. COX of California. Our amendment dealt with section 109 and struck it. The gentleman from Michigan added a new section 110. Our amendment has no effect on it. So the gentleman has carried the day.

Mr. PETE GEREN of Texas. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of this amendment. The amendment in front of us applies to noneconomic damages known to most people as pain and suffering, emotional distress. Joint and several liability for noneconomic damages is a system that asks Peter to pay for Paul's sins. The bill currently remedies this inequity for all products cases.

However, our amendment extends this much-needed reform to all civil actions. This means that each defendant will be liable for damages for pain and suffering in an amount proportional to his fair share.

When joint and several liability was first developed, plaintiffs had to be found completely blameless to recover damages. Now with few exceptions, plaintiffs can recover damages even if they are partially or mostly at fault. In a recent case involving Walt Disney and a woman injured on bumper cars, Walt Disney was found 1 percent at fault in an accident, yet the trial court held and the Florida Supreme Court affirmed that Disney had to pay 86 percent of the plaintiff's damages.

It may make sense to require that a single defendant be held accountable for all economic damages to make sure that the defendant is made financially whole to the extent that dollars can account for the problems suffered by the plaintiff, but there is little justification for allocating liability in this manner for highly subjective noneconomic damages.

I urge my colleagues to join me in voting for this amendment. The problems of joint and several liability are not limited exclusively to the product liability area. Excessive noneconomic damages are not commmonplace in all types of cases, including claims against citizen, small businesses, charities, and the Little League.

Let us ask each citizen to pay his or her fair share of the damages, no more, no less. That is fair.

Mr. Chairman, I ask my colleagues to support this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, the House a little earlier rejected an amendment which would have denied discovery to American firms which were involved in product liability cases where foreigners were taking advantage of them and where they were receiving shelter under the bill. Note that the vote was 258 in favor of that amendment, an overwhelming win. This amendment would, and language of section 109, eliminate the requirement that foreign companies inside this country appoint an agent for purposes of receiving service in the case of product liability suits.

I say that the House has once rejected that principle and should again reject it. Under the previous amendment, you could not get discovery. Now you cannot even get into court under this amendment.

Let us talk about something other. In eliminating the joint and several liability, a man hires two hoodlums to kill his mother-in-law. The woman is horribly disfigured. Judgment is collected ultimately by the woman against the husband and the two hoodlums. She can only collect approximately a third because no longer is there joint and several liability.

Another case: A Member of Congress is liabled by his local newspaper, charged with contributing to the delinquency of a minor. No longer under this amendment is there joint and several liability. He sues the newspaper and the two reporters. Because joint and several liability is no longer there, he can only collect approximately a third of the damages which would have been appropriately assessed against the wrongdoers.

This is a bad amendment. It is an admirable reason for why we ought not write legislation of this kind on the floor. It carries the question of liability. It carries the question of compensation well beyond the question of product liability.

It carries it into all civil wrongs and all civil litigation.

The amendment should be rejected. It favors foreigners, it favors wrongdoing. It puts the innocent at risk. It denies people proper recovery for serious wrongs, intentional or otherwise.

I urge the amendment be rejected.

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

Mr. DINGELL. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, the section that is being deleted by the Cox amendment requires the foreign manufacturer to appoint an agent for service or process. The prior amendment of the gentleman from Michigan [Mr. CONYERS] did not touch that issue at all. So what this is doing is something very inconsistent with the spirit of the Conyers amendment, but if this amendment should pass, contrary to the author's representations, it would do great damage just as the gentleman has suggested.

Mr. DINGELL. Reclaiming my time, Mr. Chairman, it strikes the provision relative to service of process. It strikes the proper requirement that foreign companies appoint an agent for purposes of receiving service.

Mr. DOGGETT. Mr. Chairman, if the gentleman will continue to yield, the House, previously, by an overwhelming margin adopted the amendment of the ranking Member, the gentleman from Michigan [Mr. CONYERS]. It does deal with trying to assure parity that we, for once, do not give all the advantages to the foreign manufacturers, that we realize the importance of American manufacturers and now the spirit and the principle of that amendment is being undermined by the amendment being offered at this point, because it deletes the section in this particular provision that requires these foreign manufacturers to have an agent for process, something that every American manufacturer has to do.

Mr. DINGELL. The House has already spoken. Foreigners should respond in discovery. But this amendment strikes the ability to even get them in court. It takes away the ability of an American injured by foreign misbehavior in the area of product liability to even get service, because no longer must the foreigner appoint an agent for purposes of receiving service under this legislation.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

It is very interesting to note that the fair share rule that we are proposing in this amendment is apparently so unobjectionable that the minority chooses not even to debate it, but rather to debate the red herring, first, that the Conyers amendment that we earlier passed might be stricken by this amendment. They have now conceded that the Conyers amendment is protected, is part of this bill. We have just passed it. It is not stricken.

But the argument is raised that the service of process provisions in another

part of the bill, which are required in order to make the Conyers amendment work, would be stricken. That is neither here nor there because the Hague Service Convention already provides procedures consistent with our international agreements that will permit the Conyers amendment to work perfectly fine.

Mr. Chairman, I yield 3 minutes to the gentleman from Nebraska [Mr. CHRISTENSEN].

Mr. CHRISTENSEN. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in support of the Cox-Geren-Ramstad-Christensen bill under debate here. This is an important piece of legislation that will ensure small businesses and volunteer organizations, to make sure that they are brought under the umbrella of protection that we have sought to provide other American manufacturers.

This amendment will extend the prohibition against the unjust application of joint and several liability to all civil cases involving interstate commerce.

□ 1900

The litigation explosion is having an adverse affect, not only on our manufacturing, but also on the Nation's start-up businesses and other small businesses. Frivolous and excessive litigation has an especially destructive affect on small businesses.

We all know these sorts of businesses. They are undercapitalized and understaffed, which means they cannot afford either the lawyer bills or the ridiculous amounts of time it takes for an individual to deal with a legal matter.

Under the rule of joint and several liability, a small business can find itself literally driven out of business by a jury in search of a pocket, and a pocket with money in it. It is usually the deep pocket they are looking for.

But small businesses are not alone in being threatened by joint and several liability. We have all heard the horror stories about the vastly increased insurance premiums that volunteer organizations and municipalities across the country are being forced to pay because of the ridiculous rulings against them.

Those rulings, based on the doctrine of joint and several liability, based on the idea that you can be held entirely responsible for the injury if you are only 1 percent or 2 percent at fault, are absolutely wrong. When trial lawyers go looking for a State that has been very kind to them, and sympathetic juries, they go to States like Alabama and Texas. I will tell the Members, it is time to restore some common sense back to this rule.

That is why Congress needs to exercise its authority to serve as the arbiter on the issues that are involving interstate commerce, so that we have cases that are judged similarly in New York and in Texas and in Alabama and in Omaha, NE, where I am from.

We need to end the arbitrary doctrine of joint and several liability, and we need to end it today. I urge my colleagues to vote for this Cox-Ramstad-Geren-Christensen amendment, and to do it today.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. I thank the gentleman for yielding time to me.

Let me say first of all, Mr. Chairman, there is bipartisan support for this amendment, but my opposition I hope will demonstrate that there is indeed some bipartisan opposition to this amendment. I wish there were more than 2 minutes in order for me to explain all of the variety of reasons why I do so.

Fundamental to it is, No. 1, the recitations of the findings and purposes of the amendment I think are inordinately broad. They represent a conclusion by this Congress that we think there are too many lawsuits being brought in America, and plaintiffs are winning too many of them. That may or may not be the case, but I suggest it is not even the function of this Congress to make that judgment. The function of this Congress is as to Federal law, to set forth the ground rules, the parameters, and the substantive law for the Federal courts in cases where there is Federal jurisdiction.

I complain of this amendment because it federalizes a significant aspect of the law which, until now, has been relegated to the State courts and to a State court system in which most of the litigation is brought. I would suggest that we make a mistake to federalize civil justice in this United States from this Congress, and would say to my colleagues, especially on this side of the aisle, if we do it today in this fashion, under these findings, for these purposes, it can be done tomorrow for entirely different purposes.

Mr. Chairman, let me finally say that this notion of joint and several liability is bottomed on principles, principles that were part of the common law of England, brought to America in the 13 original colonies, and a part of the law of all of those 13 original colonies forming the Union, and have been a part of the law of all of the States for all of the years since.

I wish there was time for me to discuss with the Members, and I hope someone else will, the principle on which that rule regarding joint and several liability is bottomed. There is a principle involved.

Mr. COX of California. Mr. Chairman, I yield 3 minutes to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of this amendment to extend the fair-share rule to all civil actions.

Mr. Chairman, other than the vote on final passage, make no mistake about it, this will be the most important vote we will have on tort reform. The bottom-line question for each of us to answer is this: Why on earth should a defendant with 1 percent or 2 percent of liability be held 100 percent responsible for payment of noneconomic damages. That is the question each of us has to answer. That is not fair, and everyone knows it.

Let me stress what this amendment will not do. It will not end joint liability for medical expenses. Thus, even though a party may be only 1 or 2 percent at fault, such a defendant could still be held 100 percent liable for the plaintiff's medical expenses and other economic damages, such as lost wages.

While this also may not be fair to such a defendant, it would be more unfair to deny an injured plaintiff the means to be made whole again, and that is what our tort system is all about, to make an injured plaintiff whole.

Mr. Chairman, let us make it perfectly clear that this amendment simply limits noneconomic damages in proportion to each defendant's share of fault. This, Mr. Chairman, is just common sense. Let me give Members an idea of an actual case involving the problem that joint liability can cause.

Those of the Members who have been there or lived there know that in Minnesota we have two seasons, winter and road construction. We see signs for most of the year "Slow down, give them a break, under construction."

Now, picture among these signs a drunk driver careening at an excessive speed through detours posted at 45 miles an hour. The end result is a crash. Next comes a lawsuit brought by the drunk driver. Who does the drunk driver sue? For starters, he sues the State highway department, but the State in this case imposes limits on its liabilities, so the driver's attorney sues every deep pocket imaginable: in this actual case, not only the State but the road contractor, the utility company who owned the adjoining property, the engineering firm who designed the detour through which the drunk driver plowed his car, and so forth.

In the end, the defendants decided to settle out of court for $35,000 each. This was after a 15-member engineering firm spent over $200,000 in legal fees over 5 years, and 100 hours of work that should have been spent on engineering. Clearly, the drunk driver's attorney would have thought twice about suing all possible deep pockets if joint liability were not available.

I urge all of my colleagues to support this amendment to restore common sense to our legal system, to restore proportionate liability and the fair share rule.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, the intellectual weakness of the arguments of the proponents is really quite amazing, if you take just a couple of moments to think about it. First, every case they cite talks about the 1-percent negligent party, but the vast majority, I believe all the Republicans, voted for a rule which prohibited amendments to eliminate any minor wrongdoer, anyone below 20 percent, from having joint liability, while keeping the major wrongdoers in the case, because in the end, the issue is who is going to get shafted. Either it is the plaintiff, or it is one of the wrongdoers.

We concede, at least in my amendment that I offered, and it was denied, that minor tort feasor should not have to pay the entire judgment. Second, a great deal is made about how important and logical this is, and it is only fair, but it does not apply to economic damages.

The gentleman from Massachusetts [Mr. FRANK] had an amendment to exclude anybody who is under for economic or noneconomic damages. If it is unfair to pay the pain and suffering, why is it fair to pay the economic damages?

I know why you did not do it that way, because it looked too cruel, because the proponents of the amendment talk about "We are just dealing with the feelings part of this." If a person becomes a quadriplegic because of the negligence of another, and they say "You pay the medical bills and the wage loss and that is it, everything else is just about feelings," you amputate the wrong leg because of the negligence of the hospital or the doctor, you pay whatever wage loss there is, there may be none, you pay the medical bills, and then everything else is just feelings, we are talking about compensating the person and making them whole.

Get rid of the minor tort feasors by excluding the 1 percent, 2 percent, 5 percent, 10 percent case. Do not let off the major wrongdoers, and leave the plaintiff without being made whole, without compensation. You talked about the drunk driving case. What you have passed with title II in this bill is a punitive-damages statute which keeps a person who is injured by a drunk driver from suing the drunk driver for punitive damages on State remedies.

The amendment is so broad it reaches into the typical automobile case in a neighborhood in any city in America. It is not limited to product liability. It is not limited to interstate commerce. It is the most far-reaching, intrusive kind of amendment imaginable.

The best comments I have heard today were from the gentleman from Virginia [Mr. BATEMAN], a true conservative, who wanted to know what business is it of Congress' whether in an automobile accident case at an intersection, there is joint and several liability or not?

We can make arguments either way, but the State legislature and the Governor, they are the people to decide. They are the ones closest to the voters. There is no Federal question involved in this, but there are some economic interests and some insurance companies who want it, and I do not believe that is the motivation, because I am not into attributing motivations to people; some people see that perspective, but they do not see what is going to be left for the plaintiff or for the concept of Federalism.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman who just spoke stated "It isn't limited to interstate commerce." Were that true, I would not support this amendment, but of course, it is expressly limited to interstate commerce, which is precisely the role of this Congress under Article 1, section 8.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Chairman, I shall have to talk fast.

Mr. Chairman, 33 States have abolished joint and several liability. That is the problem. There are 33 different laws, different methods of avoiding and evading joint and several liability, which is very unfair. The serious problem of inconsistency in the tort laws of the 50 States is there. This seeks uniformity, which makes legal common sense.

Mr. Chairman, let me briefly address the federalism aspect that I have heard so much about today. I have heard from Members on our side of the aisle who are troubled by our preempting of State laws. They insist that the States are important and should not be administrative districts of the Federal Government.

I just want them to know what the passing of time has done to that notion. We have the Environmental Protection Agency, Food and Drug Administration, Occupational Safety and Health Administration, Consumer Product Safety Commission, Equal Employment Opportunity Commission, National Labor Relations Board, Federal Trade Commission, Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodities Futures Trading Commission. Every aspect of life is regulated by the Federal Government. I have not mentioned the Americans with Disabilities Act, ERISA.

The only facet of our great economy that is left untouched is the multibillion-dollar litigation industry. It seems to me it is eminently justified that we try to put some common sense and rationality, predictability, into this big business of lawsuits. That is what the gentleman is trying to do. I support it wholeheartedly.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, in these cases, all the victim knows is that he was injured. If you have a doctor who is clearly negligent, the doctor can escape some liability by saying it was 5 percent the nurse's fault, 10 percent the anesthesiologist's, 10 percent the hospital, 10 percent the product, and now where are we in the lawsuit?

The plaintiff has to have five different defendants, five different sets of lawyers, five different judgments, five different collections, some insolvent. This consumer just has to, I guess, get over it. They are not going to be able to become whole.

Mr. Chairman, we have always had loser pays. Even if they win, they might be having to pay opposing counsel. We have limited damages. We have come up with new defenses.

Mr. Chairman, this reduces the accountability of wrongdoers. It allows wrongdoers to escape responsibility for their actions, at the expense of the innocent victims. Consumer protection is taking another giant step backward. I would hope that we would defeat this amendment.

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, 50 States, 50 different State laws affecting interstate commerce, and we have for so long allowed a tremendous ripoff. It blows my mind that we have tolerated this for so many years.

Mr. Chairman, I rise in support of Common Sense Product Liability and Legal Reform Act of 1995, and I rise in support of the amendment of the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. PETE GEREN] the fair share amendment.

It is so simple. It does not take a lot of words, a lot of legalese. The bottom line is so simple. If you are responsible, you should pay your proportionate share of whatever problem you caused, but if you are not responsible, you should not be held liable.

When I hear of the outrageous awards that are given to an individual plaintiff, and then I learn of the liability that company had, which was 100 percent, when in fact they only caused 5 or 10 percent of the action, and then I think "Who pays?" I pay, you pay. We all pay for this outrage. This outrage needs to end.

□ 1915

The bottom line is so simple, it is so clear and maybe it is just one has to be

an attorney to find it confusing. If you are in fact responsible, you should pay. If you are 50 percent responsible, you should pay 100 percent of your 50 percent. But you should not have to pay when you are not responsible in the vast majority of the cases.

I urge my colleagues to vote this amendment and vote this bill. I consider it of all the bills coming before this Chamber the most important bill that we will vote on in this entire 2 years.

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

Mr. COX of California. May I inquire of the Chair how much time remains on each side?

The CHAIRMAN. The gentleman from California [Mr. COX] has 3 minutes remaining and the gentleman from Massachusetts [Mr. FRANK] has 5½ minutes remaining.

Mr. DOGGETT. Perhaps the gentleman might yield on section 109.

Mr. COX of California. As I indicated, I would like to reserve time at the end for such purpose.

Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. I thank the gentleman for yielding me the time.

I rise in strong support of this bill to abolish the doctrine of joint and several liability. The core of our judicial system, I think, is one of fairness and has been repeated so often today.

In this context, it just seems to me the fairest thing, that a person at fault have to pay and if a person is not at fault, then they should not have to pay, that it ought to be grossly unfair for this system to require a defendant to pay the full judgment, 100 percent of a judgment, when a jury has decided that they are not 100 percent liable, perhaps as little as 1 percent liable.

The example that I have seen used so many times, you have got 3 defendants, X, Y, and Z, and X is held to be 10 percent at fault and Y and Z 45 percent at fault each for a total of 100 percent. If 10 percent is the deep pockets in the case and they are going to have to pay 100 percent of the judgment, they may have a right to go back against the other two defendants, Y and Z, but if Y and Z have no money, which is usually the case, it is worthless.

Let me address just briefly before I sit down two examples that have been brought forward from the other side. One had to do with the doctor who might be 5-percent liable and point the finger at the nurse and this nurse and this doctor and this hospital and that the lawsuit would result in more defendants coming in. Let me assure the gentleman from Virginia that the lawsuit will certainly include all of those people, anyway. There is a shotgun approach that is used so often in litigation to sue anybody that might be at fault and that is what happens in the type of system we are working under.

Under another example cited by the gentleman from Michigan, he used the example of a husband hiring two hoodlums to beat up his wife and somehow that the husband might escape 100-precent fault on that because of the actions of the hoodlums. I would suggest that the legal theory of principal and agent would be at work there and certainly whatever the hoodlums did to his wife, he would be held 100-percent accountable and I would assume a jury would so find him and he would be 100-percent liable for the judgment to his wife. Again I think this is the only fair thing to do under the circumstances, and I strongly support the bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time for the purpose of closing.

Mr. COX of California. Would the gentleman from Massachusetts who has significantly more time be willing to yield to the gentleman to ask a question?

Mr. FRANK of Massachusetts. No.

Mr. COX of California. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I just learned something this evening. O.J. Simpson does not have the most creative lawyers in the world; the most creative lawyers in America are right in this Chamber.

Did Members hear some of these arguments? One fellow from Michigan who I admire a great deal got up and said, "Don't vote for this amendment, people in Congress, because if you do, you can't sue your local newspaper if they wrong you."

Have you ever heard of a Congressman winning a case against a local newspaper? In fact, Sullivan versus New York Times says you cannot sue your local newspaper.

The reason that this is a great amendment comes not from this body but from George McGovern. Remember him? After he left the Senate, he went into business, and here is what he said in the New York Times. He said,

> America is in the midst of a new Civil War, a war that threatens to undercut the civic basis of our society. The weapons of choice are not bullets and bayonets but abusive lawsuits brought by an army of trial lawyers subverting our system of civil justice while enriching themselves.

That is why this is a good amendment. The Manhattan Institute says it costs $100 billion a year. Vote for this amendment. It is a great amendment.

The CHAIRMAN. To close debate, the Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. To begin, Mr. Chairman, there is not the remotest evidence that George McGovern was talking about this particular amendment, because this amendment is not about product liability. The restriction on joint and several liability for noneconomic damages on product liability is in the bill. This bill, and I was glad to hear the gentleman from Illinois proclaim the death of States rights, because what this bill says is, "This section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought."

This is an amendment that does not deal with product liability but that is already covered. This says any lawsuit anywhere in America where people are looking for noneconomic damages, we will tell the States how to run things. People said, "Well, we've got to protect our manufacturing. We do a lot of exports." Then they mentioned the Little League. Well, it is not my impression we export that many little leaguers. I know the kids go overseas to play ball, but most come home. They rarely leave but one or two behind. The fact is that this is a statement by the Republican Party on the whole, not all of them, saying, "We don't trust local juries, we don't trust local legislatures, we don't trust local judges. We will tell you how to run, not manufacturing, not interstate commerce, any civil lawsuit." Someone falls down the steps, someone is sued for libel, someone claims alienation of affection, anyone, so it is the most arrogant grab from the States by the Federal Government. Because it is not about manufacturing. We do not need that. The amendment is about every single lawsuit and it says we cannot trust the juries and we cannot trust the States.

As to the noneconomic damage thing, I offered an amendment that said if you are less than 20 percent responsible, you do not get joint liability for economic or noneconomic damages. That must have been a good amendment. How do I know? The Committee on Rules would not let it in. The Committee on Rules is for openness on any amendment they think they can beat.

The argument made is that it is unfair to the small tort-feasor to give that person joint liability. It is unfair economically and it is unfair in the noneconomic. The distinction is not between economic and noneconomic damages in a logical world but between the large and the small degree of responsibility.

So I said all right, let's not discriminate between economic and non-economic with the gender bias and the class bias that that implicates, let's cut off the small versus the large. But the Republican Committee on Rules said, "Oh, no, that's too logical and we can't have that, because if we're going to tell every State court in America how to deal with every lawsuit in America where anybody alleges noneconomic damages, then we better do it the other way."

Plus we also have the gentleman's amendment which does weaken the amendment of the gentleman from Michigan. Under the amendment of the gentleman from Michigan, a foreign manufacturer must name an agent to be served here. The gentleman strikes that in this amendment. We would still theoretically have jurisdiction if we can find them to serve them.

I mean in Croatia, they have jurisdiction over Serbian war crimes but they are not going to try many Serbs and we will still have technical jurisdiction over foreign manufacturers but if the gentleman from California's amendment passes and they do not have to designate an agent for accepting process, we will not get many of them into court. It is an abstract discussion and what he is saying is to every State court in America, every State court in America, if there is a foreign manufacturer, you can't require them to serve process and if you want to sue them in State court, good luck to you. Maybe the United Nations can pick them up on the way to try and find some Serbs in Croatia, because they will have about as much chance.

This belies the notion that the Contract is about empowering the States. This says when we feel that the economic interests with which we are in most sympathy will be better served by nationalizing matters that have been State law for 200 years, we will do so. And we will claim it is according to interstate commerce, that will be the entering wedge. Then we will give you an amendment which says any civil action in any Federal or State court on any theory.

This is the "anys" amendment. Every "any" that applies got put into this amendment. Any case, any State, any cause of action, any reason they want, congratulations, you are now under Federal law.

This amendment brings back Selective Service. You have just drafted every State court and every State jury and every State cause of action and it has nothing to do with interstate commerce. Maybe the Republican party has adopted the theory that there is no more interstate commerce.

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

Mr. FRANK of Massachusetts. No, no more than the gentleman would yield to the gentleman from Texas.

Maybe you have now adopted a theory that there is no more interstate commerce, that we are all one big unitary society. I think you are going a little far myself, but I take it after we heard the gentleman from Illinois who said everything in American life has been nationalized except this, that you have now conceded that everything is now fair game nationally and we will not hear the States rights arguments again.

Fifty different State laws, is that not terrible? Of course where poor children are concerned, 50 different State laws is a good idea. Where school lunches are concerned, 50 different low levels of State nutrition, that is a good idea. Where Aid to Dependent Children 3- and 4-year-olds who need economic support, let's give it back to the States.

I have never seen such selectivity about what goes to the States and what does not.

I yield to my friend the gentleman from Texas.

Mr. DOGGETT. This amendment deletes section 109 from the bill. Section 109 of this bill requires that a foreign manufacturer to benefit from this bill at all, to get any benefit from it, appoint an agent for service of——

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 263, noes 164, not voting 7, as follows:

[Roll No. 225]

AYES—263

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Danner
Davis
Deal
DeLay
Dickey
Dicks
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Maloney
Manzullo
McCarthy
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (CA)
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Pomeroy
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—164

Abercrombie
Ackerman
Andrews
Barrett (WI)
Bateman
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Chapman
Clay
Clayton
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Manton
Markey
Martinez
Martini
Mascara
Matsui
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Nadler
Oberstar
Obey
Olver
Orton
Oxley
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pickett
Poshard
Rahall
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tauzin
Thompson
Thornton
Thurman
Torres
Towns
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)

Waxman	Wise	Wynn
Williams	Woolsey	Yates
Wilson	Wyden	

NOT VOTING—7

Cubin	Murtha	Tucker
Forbes	Owens	
Gibbons	Rangel	

□ 1945

Messrs. POSHARD, HAYES, and COLEMAN changed their vote from "aye" to "no."

Messrs. HOLDEN, MILLER of California, FAZIO, TEJEDA, and Mrs. KENNELLY changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1945

The CHAIRMAN. It is now in order to consider amendment No. 12, printed in section 2 of House Resolution 109, as modified.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. COX of California:

Page 19 redesignate section 202 as section 203 and after line 19 insert the following:

SEC. 202. LIMITATION ON NONECONOMIC DAMAGES IN HEALTH CARE LIABILITY ACTIONS.

(a) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—In any health care liability action, in addition to actual damages or punitive damages, or both, a claimant may also be awarded noneconomic damages, including damages awarded to compensate injured feelings, such as pain and suffering and emotional distress. The maximum amount of such damages that may be awarded to a claimant shall be $250,000. Such maximum amount shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought with respect to the health care injury. An award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the limitation on noneconomic damages, but an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment or by amendment of the judgment after entry. An award of damages for noneconomic losses in excess of $250,000 shall be reduced to $250,000 before accounting for any other reduction in damages required by law. If separate awards of damages for past and future noneconomic damages are rendered and the combined award exceeds $250,000, the award of damages for future noneconomic losses shall be reduced first.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any health care liability action brought in any Federal or State court on any theory or pursuant to any alternative dispute resolution process where noneconomic damages are sought. This section does not create a cause of action for noneconomic damages. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages. This section does not preempt any State law enacted before the date of the enactment of this Act that places a cap on the total liability in a health care liability action.

(d) DEFINITIONS.—As used in this section—

(a) The term "claimant" means any person who asserts a health care liability claim or brings a health care liability action, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent or a minor.

(b) The term "economic loss" has the same meaning as defined at section 203(3).

(c) The term "health care liability action" means a civil action brought in a State or Federal court or pursuant to any alternative dispute resolution process, against a health care provider, and entity which is obligated to provide or pay for health benefits under any health plan (including any person or entity acting under a contract or arrangement to provide or administer any health benefit), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, in which the claimant alleges a claim (including third party claims, cross claims, counter claims, or distribution claims) based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, or defendants or causes of action.

Page 17, line 10, insert "and other" after "punitive".

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. COX] will be recognized for 20 minutes, and a Member in opposition will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are coming to the conclusion of our debate about reform of our civil justice system in America so that the courts will once again earn the maxim "Equal justice under law," and no longer will people have to fear the courthouse and think it is not a place for them and think it merits rather the admonition from Dante's Inferno, "Abandon hope, all ye who enter here."

It is impossible, it is unthinkable, to handle lawsuit reform in the Congress without considering health care, because nowhere in our American life have the skyrocketing costs of lawsuits done more damage than in our health care system.

For the last 2 years, in 1993 and 1994, we debated health care in this country. And during that last 2 years of debate, in 1993 and 1994, through all the hearings, we all know the story. The American people came to the essential realization that we need to control health care costs so that we can increase access for those who are least able to afford basic care from doctors and good hospitals.

We decided we did not want a government-run system, but we decided if we can, we would like to get rid of all of the extra costs that lawsuits and lawyers suck out of our health care system, to get rid of all of the extra costs that defensive medicine imposes on our health care system, that is all the unnecessary tests that all doctors perform. Three-quarters admit they do this because of the threat of liability, if for no other good reason, $9 billion in extra malpractice premiums attributed to defensive medicine. Another $20 or $30 billion according to various estimates are attributed to this defensive medicine, which is doctors behaving not in the best interests of the patients, but lawyers, so Ralph Nader and Joel Hyatt seem to have more to say about the kind of health care we have in this country than doctors and patients.

We have a system in place in several States in this country, in particular my home State of California, that has worked very well, called MICRA. It has limited our health care premiums for the average Californian from somewhere between 33 percent and over 50 percent less than other States without these reforms. That is what I propose in this amendment today. The only change that this makes is in health care cases; not all civil cases like the last one, just health care cases.

We believe that we should have a system in America that compensates without limit, 100 percent of all of the damages that somebody might suffer. They should be able to claim these through a lawsuit, all of the damages for their medical expenses, for their doctors' expenses, for their hospital expense, without limit, all of their rehabilitation expenses, all of their future estimated lost income and earnings. All of these things called economic damages should be compensable without limit.

We have already decided that on top of that, they should be able to multiply all of their real, actual damages times three and get that in punitive damages. In our country uniquely we have something called noneconomic damages. That means things we cannot really monetize, we cannot figure out how much it is worth, but we just want to add extra on top of all the real damages and punitive damages.

Only four other countries in the world allow this kind of damage. For the rest of the world it is zero, and for the other countries that allow it limit it sharply. In Canada this type of damage award is limited to $180,000. In California we limit it to $250,000. That is what we would do in this amendment.

Mr. Chairman, I urge my colleagues to vote for this vitally important health care reform. We know we need it. I hope that Members will act upon it.

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

Mr. BERMAN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from California [Mr. BERMAN] is recognized for 20 minutes.

Mr. BERMAN. Mr. Chairman, I yield myself two minutes.

Mr. Chairman, let me initially correct some of what I am sure are the inadvertent misrepresentations of the gentleman from California. No. 1, California's health care premiums did not go down 33 percent over what they would have been. The gentleman is referring to the malpractice premiums paid by physicians, not the health care premiums paid by citizens.

Second, this bill is not in any fashion limited to medical malpractice. It covers, with a $250,000 limit on pain and suffering, any health care liability action which is defined in this bill under any theory, tort, or contract, that a contractor could have a provision for liquidated damages, anything like that that goes beyond the medical costs and the lost wages, and it seeks to put this $250,000 limit on that.

The anomaly is when this day is done, if this amendment passes, and you ride in a car which is manufactured defectively, it explodes, and you are paralyzed, there is no limit on what you can get for pain and suffering. Difficult to quantify, but very real. You are paralyzed for the rest of your life, you are a quadriplegic, the wrong leg is amputated, there is something there beyond wage loss, and there is something there beyond just the simple cost of your medical treatment.

If you are injured in that explosion by that defective car, no limit. If you are injured because of the negligence in a defective medical device and it results in your being paralyzed, you are capped at $250,000.

What is the logic of the distinction? I do not know. I will be interested in hearing the gentleman speak to that particular issue.

Once again, we have gone way beyond the issue of product liability and gone way beyond the issue of medical malpractice. In California there are a series of damage remedies for bad faith insurance practices. If it is a health insurance policy and the health insurance company does not pay and the result is serious injury to the person, if he is arbitrarily canceled and there are massive losses and a breach of contract, under that theory, no matter what the contract provision provides for damages, this comes in and caps the pain and suffering with those limitations.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to respond to the gentleman from California by saying he is correct that as a result of the health care lawsuit reform passed in California, by a Democratic legislature I should add, medical liability premiums are 33 percent to 50 percent lower on average than those in other States that do not have these reforms.

Mr. Chairman, I yield to the distinguished coauthor of this amendment, the gentleman from Texas [Mr. PETE GEREN], 2 minutes.

Mr. PETE GEREN of Texas. Mr. Chairman, I rise in support of this amendment, and I want to direct Members' attention to the change that has been made in this amendment. This was an amendment that was the subject of the rules change earlier today in the printing in DSG that describes it as a limit on noneconomic damages for all civil actions. That is no longer correct. This is limited to health care liability actions. It is patterned after the MICRA system in California.

The Office of Technology Assessment reported in 1993 that limits of this type that will come about as a result of this amendment are the single most effective reform in containing medical liability premiums. Ohio is a good example of a State in which a cap on noneconomic damages had a substantial impact on costs until it was struck down. Prior to the enactment of the cap, Ohio's payment of medical malpractice claims was 3.7 percent of the total nationwide. That declined to 2.9 percent while the reforms were in force. In 1982, the Supreme Court invalidated the claim, and by 1985 the percentage of nationwide claims had almost doubled to 5.4 percent.

California had the highest liability premiums in the Nation prior to its enactment of a cap of this type. Since its enactment, cap premiums are now one-third to one-half of those in New York, Florida, Illinois and other States that do not have these kind of limits.

Contrary to what many are saying, a ceiling on noneconomic damages will not in any way restrain the ability of an injured party to recover medical expenses, lost wages, rehabilitation costs, or any other economic out-of-pocket loss suffered. It only limits those damages awarded for pain and suffering, loss of enjoyment, and other intangible items. These items routinely account for 50 percent of the total payment of a suit and are highly subjective.

Mr. Chairman, this system has worked in California, it is an important planning in any health care reform we consider as a country, and it will help us hold down the skyrocketing costs of health care in this country.

Mr. Chairman, I urge my colleagues to support this amendment.

□ 2000

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Chairman, I do not profess to be an expert on any subject. But I come to this debate with some experience. Prior of my election to Congress, I spent 10 years practicing law, specializing in medical malpractice. I defended doctors, and I brought suit against them.

Let me ask my colleagues, if they can for a few moments, to forget the lobbyists, forget the companies, the insurance companies, and forget all of the special interests and listen to one simple tragic story.

One of my first cases involved a baby girl. I would say to the gentleman from California, Mr. COX, and to the gentleman from Texas, Mr. PETE GEREN, that like most parents in America, these parents took their baby girl to the pediatrician for her baby shots. Unfortunately, this little girl has suffered from a rash called roseola a few days before she went for her shots. Because of the doctor's failure to ask and examine, the little girl suffered a devastating reaction to the vaccination. The brain damage was so severe she was left in a permanent vegetative state. She would never speak, never walk, never go to school. She would be in diapers as long as she lived.

For 5 years or 50 years or more, she and her loving parents would suffer from the negligent act of that doctor.

Mr. COX and his amendment would decide that no matter how long she lived, no matter how long she suffered, her maximum recovery for pain and suffering would be $250,000. Mr. COX would take away from any court or jury in America the right to decide that she and her parents deserve 1 penny more.

My Republican colleagues call this common sense legal reform. Limiting a deserving victim's right to recover for pain and suffering does not even reach the threshold of common decency.

We are not talking about frivolous lawsuits. We are talking about parents facing a lifetime of caretaking because of a doctor's negligence. We are not talking about verdicts that we giggle about when we hear about them on the radio. We are talking about verdicts that when you hear about them you say, it could not be enough. You could not pay me enough money to live with that injury to myself or my baby.

But Mr. COX is prepared to say no matter what your injury, no matter what your pain, no matter how many years you will be crippled and broken, your right to recover will be limited.

Our system of justice is far from perfect, but this Cox amendment would invite tragic, unjust results which would be visited on the lives of innocent victims and their families for decades to come.

This amendment is mean in the extreme. Vote "no."

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. CHRISTENSEN].

Mr. CHRISTENSEN. Mr. Chairman, do not be confused about the opponents

that I just heard visit on this, this little child will be compensated for those damages for the rest of her life. The plaintiffs bar are going to try to confuse the issue here, but in Omaha, NE, an ob/gyn pays 20,000 in medical malpractice insurance. Just across the river that same ob/gyn pays 60,000 in medical malpractice insurance. Why? Because of the reason we have tort reform in Nebraska. We have a cap on medical malpractice in Nebraska. And that is why we need to continue to enforce this State by State so other States can enjoy what we have in my home State.

Because of the litigation explosion, the cost of insurance to obstetricians jumped 350 percent between 1982 and 1988. In some areas a doctor will spend over 100,000 on medical malpractice insurance. Faced with these numbers, many doctors cannot afford to deliver babies in rural areas and poor areas. We need to put a reasonable ceiling on health care liability so it will open the way for lower insurance costs. Too many personal injury lawyers are making their careers out by waging war on doctors these days. Because of their activity, men and women and children across this land are going to suffer each and every day. This bill restores some common sense to what we need to restore in our civil justice system.

I yield to the gentleman from Georgia [Mr. BARR].

Mr. BARR. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, this begins an important process that is not independent of the process but it begins an important process, this legislative proposal, in curbing the worst excesses of the current tort system. In the future, I propose that we address additional amendments that will take into account extraordinary circumstances warranting adjustments to these otherwise generous caps.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma [Mr. ISTOOK].

Mr. ISTOOK. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in opposition to this amendment. I believe this is a deadly amendment. I believe it is a damaging amendment. I think it is an amendment that fails to take stock of reality. Under this bill, your losses must be one of two types: either they must be economic damages, as defined on page 20 of the bill, something that is a financial loss. Everything else is noneconomic damage.

If you lose your sight, it is noneconomic damage. If you lose any other organ, your ears, your hearing, it is noneconomic damage. If you lose your arm, if you lose both legs, if you are paralyzed for the rest of your life, it is noneconomic damage. And it is capped; it is treated under the same cap as intangibles such as pain and suffering.

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

Mr. ISTOOK. I yield to the gentleman from Missouri.

Mr. SKELTON. Mr. Chairman, what does this do to the nature and extent of the injuries such as someone with an amputated foot?

Mr. ISTOOK. This means that if you can still make a living with your amputated foot, then you are restricted in what you can recover, even if you can no longer play football with your kids or soccer or baseball. If you lose your sight, you cannot even go to a movie or watch a TV program. You cannot see your children. You cannot see a family picture. You cannot check out and watch a video. Whatever it may be, that is what we are restricting if this amendment is adopted.

Mr. SKELTON. I thank the gentleman for yielding to me.

Mr. ISTOOK. I want to urge my fellow Republicans, those of us who have been supporting tort reform, to vote down this amendment. I do not think a lot of Members realize what you are lumping in. The reference in the text of the amendment to pain and suffering is only by way of example and inclusion. It is not the complete definition of noneconomic damages. It does not pretend to be. Do not tell me that there is no difference between having a lifetime where you may have perpetual pain.

I had a young man that I hired in my office as a staff member that was a paraplegic in a wheelchair. Do not tell me that because he was still able to work, which he did, tremendous young man, tremendous worker, but do not tell me because of that, the accident that cost him his feelings from below the waist, is not worth anything more than someone that says, I hurt or I have emotional distress. Do not treat those as the same. Do not treat someone that has this type of disability as no different than someone who just says, I have pain or I have emotional distress.

This amendment does that. I urge my colleagues, even those who support tort reform, vote down this amendment.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

I am sure that the gentleman from Oklahoma did not mean to mischaracterize in his statement. He said that there are only two types of damages, economic and noneconomic. He inadvertently left out punitive damages which has been the subject of much debate here. Under our legislation, punitive damages are allowed, in addition, up to three times all of the actual damage.

I should also point out that there is another more important reason that we need to do health care lawsuit reform tonight. It is that the poor and the disadvantaged who use our public hospitals, our free clinics and our community clinics are the worst injured by the high liability costs today.

Qualified doctors increasingly are refusing to do high-risk procedures. And where do these high-risk procedures occur but in our public hospitals.

The front page of the New York Times last Sunday is a great example. The bottom line for babies weighing over 5½ pounds, the cutoff they use as a general gauge of good health for babies, the death rate the first 4 weeks after birth in New York City's public hospitals is 80 percent higher than for babies born at private hospitals. New York's unlimited tort liability system has not stopped malpractice cases.

They hired as an obstetrician a man who had failed for 14 years his national exams. Just a few months after he was hired by the city hospitals of New York, he became another one of their malpractice cases. New York, unlike California, does not have this kind of health care reform.

They have thousands of lawsuits. Over the past two decades those lawsuits have not stopped malpractice. They have made it worse. A 1992 report studied lawsuits of 64 children in those New York hospitals who have been left brain damaged or permanently crippled because of negligence in the delivery room. These 64 lawsuits alone cost city hospitals $78 million and another 793 lawsuits were still pending. What is seen is that more and more lawsuits lead to ever higher liability premiums and this leads to even fewer qualified doctors willing to handle the kinds of higher-risk cases that typify low-income health care.

That in turn leads to less and less access to quality care for the poor. The patients suffer.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. THOMAS].

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Chairman, I want to thank the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. PETE GEREN] for having the courage to bring this amendment to the floor.

I just wanted to tell my colleagues that the high point in the last Congress for me was as ranking member of the health subcommittee in discussing the President's health care plan. Democrats and Republicans together in a bipartisan way passed a medical malpractice reform provision out of the subcommittee. It was, of course, denied in the full committee, and we went on not to do anything at all on the floor of the 103d Congress about health care reform.

And 3 months into this Congress, on the floor of the House, is the key to health reform.

A yes vote on this amendment will, of course, lower health care costs by lowering malpractice insurance rates. A yes vote on this amendment will remove the defensive medicine costs and

lower health care rates. A "yes" vote on this amendment will get rid of the ridiculous border games now played between States and doctors because of the nonuniformity of malpractice laws across this country.

But more important and fundamentally, get your eyes off of this amendment and look up. This vote is on health care reform. It this amendment loses, the chances of meaningful health care reform in this Congress are virtually gone. This is the time and this is the moment.

I also might add, we maybe need truth in packaging around here. I want to confess, I am not an attorney. And I am for this amendment, because in passing this amendment, we have laid the fundamental groundwork for real health care reform in this Congress. Three months into this Congress, we will have made a statement to everybody. This Congress intends to be bipartisan, not just in subcommittees, not just in committees, but on the floor. Pass this amendment, and we can pass health care reform. Vote "yes" on this amendment.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, I am astounded at the comments of my colleague from California, new chairman of the Subcommittee on Health of the Committee on Ways and Means. Our State of California has these limits that this proposal would impose upon the whole country. Is that health care reform? The State of California has 3 million people who are uninsured. It has not solved our problems. Has it led to any less defensive medicine? There is no evidence of that whatsoever. Has it reduced the premiums the doctors pay? Perhaps, somewhat, it is stabilized. It may have had that value. But this is not health reform.

If you are being told we have to keep somebody who is injured and maybe even butchered in surgery from recovering to make them whole so that we have health reform, this is not what health reform is all about.

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

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

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Mr. THOMAS. Mr. Chairman, I ask the gentleman, is he an attorney?

Mr. WAXMAN. Mr. Chairman, I would say to the gentleman, I am an attorney. What is that supposed to mean?

Mr. THOMAS of California. Thank you.

Mr. WAXMAN. Mr. Chairman, is the gentleman a doctor?

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Chairman, in the previous Congress I coauthored consensus health reform legislation with our former colleague, Dr. Roy Rowland of Georgia, health reform that sought to bring to the table issues upon which broad agreement existed in the Congress and among the public. It became one of the leading health reform proposals at that time, and it was the one truly bipartisan health bill considered by the 103d Congress.

One of the consensus issues in our bill was medical malpractice reform. It was an issue upon which many Members of this body on both sides of the aisle agreed. In fact, it was a consensus item addressed in most of the health reform bills introduced in the previous Congress. I have no reason to believe that medical malpractice reform is any less of a priority in this Congress. All of these bills included a $250,000 cap on noneconomic damages, just as does this amendment.

Did the 98 Members who signed onto our legislation, 36 of them Democrats, support this cap because they wished to deny an individual the full legal redress to which he or she was entitled? The answer, of course, is no. Opponents of this amendment today claim that we cannot quantify the pain and suffering of a victim of injury. I tell them this, I cannot agree with them more. I believe that our legal system should pay the complete costs of injury, including lifetime medical costs, rehabilitation, disfigurement, or other forms of actual damage, without limit.

But the very fact that noneconomic pain and suffering damages cannot be quantified has led us into a swamp of astronomical awards that amount not to judgments but to windfalls. No other country in the world, Mr. Chairman, allows these kinds of windfall awards. Is that because they have any lack of feeling or sympathy for the victims of injury? Again, the answer is, of course not. The true reason for limiting these awards is that it is the single most effective method of reducing medical liability costs. This, in turn, leads to reduced health care costs for everyone. I strongly urge my colleagues to vote for the Cox-Geren-Ramstad-Christensen amendment today.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentleman from North Dakota [Mr. POMEROY], a nonlawyer.

Mr. POMEROY. Mr. Chairman, I would tell the gentleman from California [Mr. BERMAN], I do have a law degree, and practiced for 5 years. I never brought a medical malpractice action. More recently, I regulated insurance for 8 years. I am the only former State insurance commissioner in Congress, and it is in connection with this that I rise.

My friend, the gentleman from California [Mr. THOMAS], urged you to take your eyes off the amendment and look at the health care issue and pass this bill. The health care issue is not before us; the amendment is. I urge Members to go back and look at the text, because we could embarrass ourselves by passing this amendment as drafted.

Mr. Chairman, on page 2, between lines 13 and 16, it says "This shall apply to any health care liability action brought on any theory." I wish the sponsor of the amendment would have yielded to my question, because I was going to ask him, does that mean you cannot sue for noneconomic loss in excess of $250,000 a psychologist that was abusing his patients? I believe yes, under the strict terms of the text you have offered.

On page 3 of the bill, health liability action is defined as more than the providing of health care, but also the paying for health care. In connection with this, I have a lot of experience, because I adjudicated claims that were unfairly denied by health insurers. I am aware of people who have had bills, hospital bills they have owed, bill collectors hounding them on those bills, and yet they have not been paid by their insurance company.

Clearly, Mr. Chairman, we do not want to protect that. There is a lot of noneconomic loss that can flow from that, but that is covered under the bill, the liability is capped under the bill on any theory. No matter how egregious the conduct of the health insurer, no matter how blatant, how cruel, the liability is capped.

This bill may address a very important concept, one we need to work on. We did not have a hearing on it, we did not discuss it. The language brought before us in this amendment overreaches and would put you in the position of protecting the abusing psychologist and the claim-denying health insurer. You do not want to be in that position.

The CHAIRMAN. The Chair would inform the committee that the gentleman from California [Mr. BERMAN] has the right to close debate.

The Chair recognizes the gentleman from California.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan [Ms. RIVERS].

Ms. RIVERS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I offer the committee the words of one Frank Cornelius, who says "I think tort reform as we know it is totally bad. We have a judicial system that I find quite adequate, if allowed to function in its own way;" so you have to ask, who is Frank Cornelius? Is he some parasitic trial lawyer? Is he some rabid consumer rights advocate? No, Frank Cornelius is a lobbyist for the insurance industry. He was part of an effort in Indiana to cap noneconomic damages. What happened to Frank Cornelius? Soon after these caps were put in place, major malpractice was worked upon

him. He expects to die within the next 2 years from those problems. He has a different point of view now that he sees the problem from the side of a patient, as opposed to the side of the insurance industry. He acknowledges there is a certain poetic justice to the injury that he suffered, but he adds "If there is a God, and I believe there is, what happened to me has a purpose. It changed my way of thinking and looking at things." He says "Medical negligence cannot be reduced by simply restricting consumers' legal rights." That is what is being proposed here. Mr. Cornelius found this out the hard way.

Mr. Chairman, how many other citizens will have to learn this selfsame lesson? Not many, I hope.

Mr. BERMAN. Mr. Chairman, I yield 1 minute and 30 seconds to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. Mr. Chairman, I want Members to look at what this amendment says, at page 13. It covers anything of a medical character. It caps pain and suffering and noneconomic damages at $250,000.

Let us look at some of the things for which a person will get $250,000 maximum for pain and suffering and other noneconomic damages. A person is blinded, a person is rendered a paraplegic, loss of a leg or an arm, loss of reproductive capacity. A woman can never have a child again, she gets $250,000.

How can this body justify the enactment of a proposal which has this, on which there has been no hearings whatsoever; no hearings, no testimony, nobody knows what this does. It springs like Hebe from the brain of Jove, without the faintest appreciation of what is done, without the least awareness of what it acccomplishes.

Think of the hurt and pain and suffering that you are not properly compensating with this outrageous amendment. This is an outrageous amendment. I cannot in conscience see how I can vote for it, and I cannot imagine anybody else who could contemplate voting for this kind of outrage. No hearings, capping pain and suffering, without the faintest acknowledgment of what it will in fact cost.

Let me remind the Members, a citizen can get more on workmen's compensation, on railroad compensation, or on maritime compensation than they could get under this.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Michigan suggests that it is outrageous to propose health care reform on this floor because health care reform has not had hearings in this Congress. I think that is something, after 2 years of hearings on health care, the American people would find outrageous.

Mr. Chairman, I yield 1½ minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, I rise to support this amendment. I am a doctor. I would like to talk about three things. I would like to talk about the economic costs of medical malpractice, I would like to talk about the noneconomic costs to the patient, and let us talk for just a second about how lawsuits have limited care.

Twenty years ago when I was in medical school, when we would make rounds we would talk about the patient's illness and we would talk about the solutions. Today when you make hospital rounds you talk about the patient's illness and solutions, and how those solutions may cause a lawsuit.

What happens? You practice defensive medicine. What happens with defensive medicine? Additional tests get ordered that you would not naturally do to cover your backside, and unfortunately, this results in tremendous increases in expense to the total system.

This is real, Mr. Chairman. When I get called to the emergency room to take care of somebody with a scalp laceration, if I did not tell the emergency room doctor "Do not order that series of x-rays until I see the patient," there would be $400 worth of facial or scalp x-rays sitting there, whether it is needed or not.

The funny thing about this issue is that the noneconomic costs to patients by invasive tests that sometimes are ordered to prevent a lawsuit actually cause a paradox. Every type of invasive test has a small chance of injury, so what are we doing? We are taking and making an increased chance of injury. I urge my colleagues to support this amendment.

Mr. BERMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. CARDIN].

Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT] for purposes of a dialog.

Mr. BRYANT of Texas. Mr. Chairman, I wonder if I could ask the gentleman, the doctor, who just spoke, a question.

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

Mr. BRYANT of Texas. I yield to the gentleman from Iowa.

Mr. GANSKE. Mr. Chairman, I would be happy to respond.

Mr. BRYANT of Texas. Mr. Chairman, last week a member of the gentleman's profession did some surgery down in Florida. I heard on the radio, he was supposed to cut off a person's foot. He amputated it, and when that person woke up, they had cut off the wrong foot.

How much money does the gentleman think that fellow ought to get for pain and suffering and noneconomic damages? He woke up and he lost the wrong foot, which means he is going to lose both his feet, because a fellow in your profession made a mistake.

How much money do you think he ought to get for noneconomic damages, an open-ended question?

Mr. GANSKE. If the gentleman will continue to yield, it is inevitable that mistakes are going to be made.

Mr. BRYANT of Texas. Yes, it is.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. NADLER].

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Mr. NADLER. Mr. Chairman, in 1986 I and a number of other Members of this House were members of the New York Legislature and we took up the issue of medical malpractice. We made so-called tort reforms, we limited joined and several liability, we limited ability of continent fees, and did a number of other things. But we also ordered a study to see what was really going on, what would really work to reduce malpractice premiums.

Several years later, the Harvard study that we had ordered came down. What it showed is this: It showed that limiting damages for pain and suffering to a quarter of a million dollars would not reduce insurance premiums. It showed that 2 percent of the doctors were responsible for 80 percent of the claims and 80 percent of the awards, that the real answer to this problem of insurance premiums overwhelming the doctors is to tell the States to crack down on the 1½ percent or 2 percent of the doctors who are killing and maiming people because they are incompetent and are driving up everyone else's insurance rates.

Victimizing the victim further by this amendment is not the answer. Cracking down on incompetent doctors is the answer.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume to say that earlier in the debate, one of the Members on the other side put a question to one of our Members but then did not yield him sufficient time to respond to that question. The question that was put was what ought to be the recompense for someone who has lost a foot due to the negligence of a doctor or a hospital, and the answer to that question is quite clear. Replacing someone's lost foot is very expensive in today's world. It involves a great deal of technology, a great deal of doctors and professional care, probably lifelong rehabilitation and hospitalization, and in a fair system, 100 percent of those costs without limit would be paid by the people who were responsible, and that is exactly what we will obtain when we pass this amendment. Nothing in this amendment will change that.

Mr. Chairman, I yield the balance of my time to close the debate to the distinguished gentleman from Texas [Mr. STENHOLM].

The CHAIRMAN. The gentleman from Texas is recognized to close debate for 2¾ minutes.

Mr. STENHOLM. Mr. Chairman, status quo is not acceptable. This debate today is about changing the status quo. Everyone agrees that patients must be reasonably protected against malpractice and against undue harm for medical devices, drugs and other medical products. Unfortunately, our current system is not working, and to all of those who have spoken so eloquently against all of the faults of this amendment, none of those comments have been addressed to changing the status quo.

As one Member who has wanted to have hearings last year, the year before, the year before, of reasonably getting into debating this question, we were denied. We were never able to bring this discussion to the floor as we are doing today. I wished we had not brought that point up, because that is a sore point to this man.

Patients and physicians all are losing under our current system. That is what some of us want to change tonight, the status quo. Numerous reforms must be enacted if we are going to control health care costs. My colleague from California, a classmate from the 96th Congress, said it very eloquently and very truthfully and very factually. If we want to reform our health care system, we must start with malpractice reform. We must begin to honestly deal with the problems of health system reform by changing first the malpractice system. That alone will not solve it.

It is ironic that in one of our largest States, what we are now saying will not work has been working. This is puzzling to me. The case for medical liability relief is overwhelming. Lawsuit abuse is driving up the cost of health care for all of us. As one who represents a rural district in which we can no longer get doctors to come to our rural hospitals to deliver babies, how in the world can anyone stand here today and say the current system is adequate, the current system cannot be changed, we cannot dare to try something new, that we have to preserve that which we are doing today?

I strongly urge the support of the Cox-Geren amendment. Change the status quo. Let us make our system better.

Mr. BERMAN. Mr. Chairman, to close the debate, I yield the balance of my time to the gentleman from Texas [Mr. DOGGETT].

The CHAIRMAN. The gentleman from Texas [Mr. DOGGETT] is recognized for 4¾ minutes.

Mr. DOGGETT. I thank the gentleman for yielding me the time.

Mr. Chairman, perhaps it is a peculiar observation at a time when we focus so much attention on lawyers and lawsuits to suggest that maybe a little bitty part of the problem of malpractice in this country, malpractice litigation, is malpractice itself. The statistics from the Harvard Medical School study conducted by a group of doctors in 1990 suggest that every 7 minutes in this country, someone dies in a hospital from medical malpractice. Maybe that has something to do with why we have a medical malpractice problem in this country. But the suggestion that, well, there will be mistakes completely avoids the question, because the question is, who is going to bear the burden of that mistake, and the suggestion by the author of this amendment that we can somehow give back a foot through medical technology suggests the ability to do something that only God can do.

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

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

Mr. WAXMAN. I want to make the point that this amendment which was just thrown together on the floor last night, revised again today, never had a day of hearings, it does not apply just to mistakes. It applies to intentional conduct. A doctor who comes in, a surgeon who comes in drunk and butchers somebody would be protected under this amendment to no more than $250,000 in damages. It has no relationship to the kind of conduct that might have been involved, like a psychiatrist raping an individual patient and harming that person for life. That is a psychological damage. If you say they are $250,000 in total noneconomic damages, there may be no economic damages for that kind of case. But to say that somebody should get $10,000 a year, when their lives are destroyed, for 25 years, that is good enough? I find that tremendously offensive. If you cannot create a leg to put on somebody whose leg was amputated improperly, then the pain and suffering and the humiliation means nothing more than some limited damage. I just want to point that out to the gentleman.

Mr. DOGGETT. This is as the gentleman suggests a poorly crafted amendment that applies not only to careless conduct but to grossly careless conduct, to intentional conduct. It applies not only to the family physician that drags this legislation along in the speeches but to the nursing home that intentionally abuses older Americans. But to suggest that this has something to do with health care reform is frivolous in and of itself. The studies have shown that all the medical malpractice insurance and litigation in this country amounts to a big 63 cents out of every $100 spent on medical care. If that is where you want to start health care reform, I would submit that we start with the other 99-plus dollars out of health care and not focus on the part that relates to protecting people who are harmed by those who are careless or in this case engaged in intentional misconduct.

Mr. WAXMAN. If the gentleman will permit, medical malpractice and defensive medicine is a real problem. We need to address it. We need to look at a lot of different alternatives, alternative dispute mechanisms, some ways to compensate people who can never find an attorney to allow them to get some access to some reward for the pains that they have suffered. But this does not address these issues. The committees have never held hearings on it. This is an amendment dropped on us this morning in this latest form and I am sure that as they read through how poorly drafted it is, with the unintended, I assume unintended consequences, that it is an embarrassment to those who are supporting it.

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

Mr. DOGGETT. I yield to the gentleman from Michigan.

Mr. DINGELL. This amendment does absolutely nothing to deter litigation. It simply cuts the amount that can be paid to a person who has been wronged by medical malpractice or by other unfortunate improper practices. It denies them proper recovery. If that is medical reform, I do not know what it is.

I urge the rejection of the amendment. I thank the gentleman.

Mrs. SEASTRAND. Mr. Chairman, we need to institute a phrase from the NFL when they were still using instant replay called, "Upon further review." Because upon further review, it is clear our judicial system is filled with inconsistencies and arbitrary decisions. The "feelings" or non-economic damage claims lead the pack. These claims result in unlimited damage awards and turn our system into a virtual lottery. The lawyers get rich while the system is brought to its knees.

Make no mistake. Our system should and will pay for the full cost of injury, medical costs, property damage and income, without limit. I will fight for that. But we simply must do something to cap the unlimited and arbitrary damage claims to pay for someone's feelings. The way our system currently operates brings a whole new meaning to the Clinton phrase "I feel your pain." Do we ever.

However, there is a model for reform. The state of California. Our state set in place a cap of $250,000 for non-economic damages and that is what this amendment does. It says the defendant is responsible for all medical costs, all past and future income and all real economic damages. Then they can also be held accountable for up to a quarter of a million dollars in non-economic or pain and suffering damages. And this model works. In fact this model is credited with being the most effective reform in containing medical liability costs.

Mr. Chairman, we will never be able to put a price tag on someone's feelings or pain, but this amendment does try to place a reasonable limit on the awards so those involved in suits won't have to play the lawsuit lottery.

Mr. BARR. Mr. Chairman, I strongly believe along with many of my colleagues that tort reform must address the serious abuses that occur in the area of punitive awards for non-economic damages. On this subject, I seek a balance that takes into account important but diverse interests. We must protect against

awards that bear no reasonable relation to the injury and threaten the economic integrity of our profit and non-profit enterprises. We must also permit sufficient discretion to ensure that injuries are compensated in full. In this regard, I continue to believe that while arbitrary caps on punitive damages in all instances are to be avoided, this legislation begins an important process in curbing the worst excesses of the current tort system. In the future, I propose that we address additional amendments that will take into account extraordinary circumstances warranting adjustments to those otherwise generous caps.

Mr. NORWOOD. Mr. Chairman, we have gone too far in the area of non-economic damages. No other country in the world awards non-economic damages at or even near the levels of awards in the United States. It is almost impossible for anyone to put a dollar figure on such non-economic terms as pain and suffering; yet, our legal system continues to allow unlimited awards for pain and suffering. No other nation in the world comes close to placing economic burdens on society through non-economic damages the way we do in this country.

Mr. Chairman, this amendment is particularly important to our constituents. It is a major factor in the cost of health care today. This amendment will provide one of the best weapons possible in reducing the cost of health care. Forty percent of all MD's will find themselves party to a lawsuit, 50 percent of all surgeons will be party to a lawsuit, and 75 percent of all obstetricians will be party to a lawsuit. The problems of our tort system are not insignificant in the medical profession—they threaten the health of this nation by tying the hands of doctors. Doctors should not be forced to practice defensive medicine because they are terrified of $30 million lawsuits. The practice of medicine is not perfect. It is the science and art of the practice of medicine. No matter how good a doctor you are, when dealing with the human body, things do not always turn out perfect—as we would like.

Of course, neither is the legal profession perfect. In fact, writing laws is not perfect. Each law we write hurts some people—but the goal should be to pass laws that help the most people possible. This amendment is not perfect, but it will greatly help the majority of people in this country by reducing the cost of health.

Our physicians are being forced to practice defensive medicine. To perfect their own families. We have taken away one of the most important things you want in your doctor—to use good judgment in the practice of medicine. But when every decision is being watched over by suit-minded lawyers just waiting for the less than perfect outcome so they can get rich, it forces the doctor to make his or her first decision "How can I not be sued?" The thought process goes like this—I know we do not need this test or this x-ray for the patients benefit—but I must order this test or this x-ray in case I am sued, because some lawyer will make it appear I did not do all I can do.

There is a limit to how much malpractice one can pay for, but there is no limit to how much a jury of our peers can award. Some physicians pay as much as $150,000 per year for malpractice insurance. That increases the cost of medicine. And with jury verdicts in the tens of millions of dollars, one can never carry enough insurance to be sure you aren't ruined by a lawsuit. There must be a cap if you wish this country to continue to have the best health care system in the world—There must be a cap if you want the cost of health care to come down.

We have listened so long to the half-truths about protecting the middle class put out by the other side, it is time to lower the veil of obfus-cation and look at the costly reality that our tort system has become. We must no longer endanger the health of this Nation—we must place limits on all non-economic damages.

We should pass this amendment today.

Mr. Chairman, Congress has recognized this problem before. In 1992, Congress created the Federal Tort Claims Act in response to skyrocketing malpractice insurance premiums from federally funded community health centers. Under this act, judges rather than juries decide damages. Attorney's fees are limited and punitive damages are disallowed altogether. Why would the Federal Government institute such a restrictive system? Because the Federal Government, that is of course the taxpayers has to pay for the cost of these suits. If it is good enough for the government, it ought to be good enough for the rest of the health care industry. Let's give the rest of the medical industry that same relief.

Mr. Chairman, I end my remarks with one simple thought for your consideration. The Office of Technology Assessment recently identified a ceiling on non-economic damages as the single most effective reform in containing medical liability costs. We should do the same.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. COX].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 247, noes 171, not voting 16, as follows:

[Roll No. 226]

AYES—247

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Davis
DeLay
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Fawell
Fazio
Fields (TX)
Foley
Fowler
Fox
Franks (CT)
Franks (NJ)
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Goodlatte
Goodling
Gordon
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
McCollum
McCrery
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—171

Abercrombie
Ackerman
Andrews
Baesler
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clement
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
de la Garza
Deal
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Edwards
Engel
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Flanagan
Foglietta
Ford
Frank (MA)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gillmor
Gilman
Gonzalez
Graham
Green
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jacobs
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaFalce
Lantos
LaTourette
Levin
Lewis (GA)
Lincoln
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Mascara
Matsui
McCarthy

McDade	Pomeroy	Studds
McDermott	Pryce	Stupak
McKinney	Rahall	Tejeda
Meehan	Reed	Thompson
Meek	Reynolds	Thornton
Menendez	Rivers	Thurman
Mfume	Rose	Torres
Miller (CA)	Roybal-Allard	Towns
Mineta	Rush	Tucker
Mink	Sabo	Velazquez
Moakley	Sanders	Vento
Mollohan	Sawyer	Visclosky
Nadler	Schiff	Walsh
Neal	Schroeder	Ward
Nethercutt	Schumer	Waters
Oberstar	Scott	Watt (NC)
Obey	Serrano	Waxman
Olver	Shadegg	Weldon (PA)
Ortiz	Skaggs	Wilson
Orton	Slaughter	Wise
Pastor	Spratt	Woolsey
Payne (NJ)	Stark	Wyden
Pelosi	Stokes	Wynn

NOT VOTING—16

Boucher	Hall (OH)	Rangel
Clinger	Jefferson	Weller
Cubin	Johnson (CT)	Williams
DeFazio	Martinez	Yates
Forbes	Murtha	
Gibbons	Owens	

□ 2057

Messrs. JACOBS, GILCHREST, and DE LA GARZA changed their vote from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. JOHNSON of Connecticut. Mr. Speaker, it has come to my attention that I was not recorded on rollcall vote No. 226. I voted in the affirmative. I was on the House floor. I put my card in the machine; I saw the light go on. I did not remember to check whether it had recorded on the board, and I regret the fact that it did not record, but I am absolutely certain I voted.

I have been a long-time advocate of malpractice reform. I support the cap, and I regret that my vote was not recorded in rollcall 226 but I would have voted "aye."

PERSONAL EXPLANATION

Mr. DEFAZIO. Mr. Speaker, on March 9, I was having dinner at a nearby restaurant with the Oregon State labor commissioner and apparently my electronic beeper malfunctioned and I missed a recorded vote on the Cox amendment to H.R. 956 which would cap noneconomic pain and suffering damages in health care liability cases at $250,000. If I had been present I would have voted "no."

Mr. RICHARDSON. Mr. Chairman, product liability legislation has been debated in Congress for several years now and I would like to express some thoughts on past efforts to rectify problems with our legal system.

In 1987, I introduced H.R. 1115, the Uniform Product Safety Act of 1987, to establish standards in determining product liability lawsuits. This legislation was the subject of 22 hearings and mark-ups which enabled manufacturers, sellers and consumers to offer their views. My bill had 96 cosponsors from both sides of the aisle. Comparatively, today's bill H.R. 956, the Common Sense Legal Standards Reform Act has received little bipartisan input and leans heavily in favor of business interests.

My legislation clearly defined reasonable standards of liability for manufacturers that would have reduced excessive lawsuits without infringing on State laws or the rights of consumers. H.R. 1115 did not try to restructure technical provisions of the legal code such as abolishing joint and several liability for noneconomic loss. With congressional prodding, legislators in New Mexico have enacted reforms that meet the needs of both consumers and business groups.

Today's short-sighted debate is discouraging to Members who believe such broad measures are not only unnecessary but potentially dangerous. Among my concerns for today's legislation is the 15 years statute of repose for all products. I am hesitant to support such an all-knowing directive.

Furthermore, my legislation exempted from the new standards industrial waste, pollutants or contaminants released into air or water, tobacco and tobacco products, alcoholic beverages, and any drug or device which is used as a contraceptive or abortifacient or which interferes with human reproduction under certain circumstances. Have we really considered the long-term ramifications of today's bill?

Finally, H.R. 1115 contained provisions to increase the availability of information in product liability actions. The 1988 bill allowed courts to disclose information that presented a risk to the public health and safety. It is hypocritical for Congress to place the burden of proof on consumers as H.R. 956 does while allowing companies to withhold information that could educate consumers.

My efforts to enact responsible legislation in the 100th Congress are indicative of my support for product liability reform. In the light of current research used by the U.S. Supreme Court which claims that there is no epidemic of punitive damage awards, I remain hesitant to support the broad, precedent-setting legislation before us today. It is unfortunate that we have not been able to craft a responsible piece of legislation.

Mr. BEREUTER. Mr. Chairman, this Member rises in support of this measure and to express his pleasure at seeing this much needed legislation finally brought before this body.

This Member introduced the first product liability legislation in the Nebraska Unicameral Legislature in 1977. During this process this Member realized that this issue must be dealt with on the Federal level, because the vast majority of products and services move through interstate commerce. Addressing product liability at the state level is like patching one hole in a tire with fifty holes.

Now, finally, this issue is being debated on the House floor after years of being bottled-up in committee by the trial attorneys and the former chairmen of the respective committees.

Mr. Speaker, all Americans are paying much higher prices for consumer goods and services because this legislation has been delayed for so very long. The insurance costs incurred by companies protecting against and paying for outrageous and unreasonable product liability suits are passed along to the consumer each and every day, in nearly every product and service purchased.

Perhaps even more outrageously, the current system unfairly imposes upon the American public product design standards, which are created in response to penalties awarded in a few states with the highest punitive and compensatory damages. Those States get to impose their juries' ideas of appropriate design and safety standards on the rest of the Nation. That is a perversion of Federalism. National standards should be set by the national legislature. That is what this bill will do.

Mr. Chairman, this Member has been a long-time co-sponsor of product liability reform, dating back to at least 1986. This Member is pleased that this long delayed measure is finally being debated on the House floor and urges his colleagues to support it.

Ms. PELOSI. Mr. Chairman, I rise today to voice my opposition to H.R. 956, the Common Sense Product Liability Reform Act of 1995. This bill is an undisguised assault on the safety of the American people that will result in more unsafe products, more injuries, and less compensation for those who are hurt by corporate misconduct and negligence.

Mr. Chairman, this bill contains two provisions that are particularly harmful to women: The punitive damages cap and the provision that shields FDA-approved products from full liability.

Punitive damages in our Legal System Act as a powerful incentive for companies to make safety improvements to their products.

A punitive damages award as little as $250,000 will fail to serve as an effective deterrent in many cases. In addition, capping punitive damages awards at $250,000, or at three times the amount of economic damages, whichever is greater, discriminates against women and others who may not have large incomes.

Economic damages were generally not as high in the products liability cases of women who developed endometriosis, pelvic inflammatory disease, toxic shock syndrome, and other illnesses that left them sterile when they used copper-7 intrauterine devices or super absorbency tampons.

A punitive damage award cap is less harmful to those with higher salaries and discriminates against those who have lower incomes, many of whom are women. Justice would be meted out very differently for two people injured by the same defective Ford Pinto. The corporate CEO could seek a large punitive award based on economic damages, while the homemaker would be severely limited by the provisions of this bill.

Second, Mr. Chairman, this bill shields products from liability that have been previously approved by the FDA in spite of the fact that the record is filled with examples of drugs that have been approved or underregulated by the FDA only to cause immense physical harm once authorized for sale on the open market.

For example, the FDA approved high estrogen birth control pills which caused renal failure. It also approved the copper-7 intrauterine device which caused sterility in young childless women. The FDA defense shields negligent manufacturers at the expense of our nation's women and should be rejected.

Mr. Chairman, there is no national crisis in products liability litigation, nor is there any epidemic in punitive damages awards. To the contrary, the facts demonstrate that our current State-based products liability system works well.

It allows our citizens to seek redress when they have been injured by corporate negligence and it provides ample incentives to

correct defective products when they cause harm.

This bill favors powerful corporations at the expense of women, the elderly, the young, and all working Americans.

I urge my colleagues to reject these ill-advised reforms and to vote against H.R. 956.

Mr. RUSH. Mr. Chairman, I rise today in strong opposition to H.R. 956, the so-called Commonsense Product Liability and Legal Reform Act.

There is nothing even vaguely commonsensical about this bill. On the contrary, this bill is nothing more than a thinly disguised, let's kill all the trial lawyers bill.

Mr. Chairman, unlike so many of my colleagues on both sides of the aisle, I am not an attorney. But, unlike many who support this bill, I do not view the trial lawyers to be inherently greedy or evil.

Instead, it is my strong and considered opinion that a good lawyer can be a wronged party's only friend just when he or she needs one the most.

The overwhelming majority of our Nation's products liability plaintiffs are not just nameless, faceless individuals but hard-working Americans with mortgages and families. Their right to seek compensation for faulty or defective workmanship in consumer products cannot and should not be denied.

Many States are also moving to harm consumers and working Americans by placing arbitrary limits on monetary damage awards in product liability suits. The Governor of my State, for example, signed into law today a measure that caps punitive and pain and suffering awards while making it harder for wronged citizens to see justice served in Illinois State Courts. My colleagues, this is an outrage. We must work ever harder to see that these efforts are defeated at all levels of government.

The bill before us today would make sure that many of these persons will have nowhere to turn to redress their injuries. The rights of working-class American consumers have never been more under threat than they are now. I therefore implore my fellow Members on both sides of the aisle to oppose this extremely underhanded and reckless bill. We must work together to see that it is defeated.

Mr. MOORHEAD. Mr. Chairman, I rise in strong support of the Common sense Legal Reform Act of 1995. Civil justice reform is an extremely important part of the Contract with America. The time for enacting effective product liability reform is now. The first comprehensive product liability bill was introduced in the House of Representatives six Congresses ago by former Representative Jim Broyhill. I was proud to be an original cosponsor of this legislation. Since that time we have been blocked from action time and time again. During this long wait for federal action, the situation has only deteriorated.

The average American is confronted with a civil justice system that is too costly, too protracted and oftentimes seems to work better for the attorneys than for their clients. Each day in America, hundreds of lawsuits are filed by lawyers against fellow citizens, businesses, civic institutions, government entities, and countless other targets. This seemingly endless series of legal attacks has practically numbed America to the fact that, as a Nation, we have become the most litigious society on Earth and that an onslaught of lawsuit abuse has had damaging and lasting effects on the standard of living of all Americans. While most legal actions brought in the United States seek legitimate redress for harm caused, unfortunately many are groundless, frivolous and the result of lawyers who abuse the system and seek to claim lottery sized dollar awards from both their advisory and their client. It is these types of abuses that bring discredit to the American legal system, damage the U.S. economy, and drain precious national resources into the dark hole of endless litigation. The current system creates fear among Americans that they will likely be the victim of an unjust lawsuit. It chills their desire to volunteer and participate in many aspects of ordinary life, and it prevents the introduction of new and beneficial products and services to the American people. Companies in many industries across the 50 states have discontinued product lines, closed plants, shut down divisions, been forced overseas and, in some cases, have been bankrupted by the current product liability system in this country. We should ask the men and women who have lost their jobs in these industries whether or not we need to change the current system. When the House Judiciary Committee considered this legislation, we heard testimony from a medical equipment manufacturer that it will soon be unable to get raw materials to make pacemakers and other implantable medical devices because of liability concerns of its suppliers. We have been warned specifically that the current product liability system is stifling innovation and preventing newer and more effective lifesaving medical devices from ever coming to market. Biomedical and pharmaceutical executives have testified repeatedly before Congress that they are not developing vaccines and medicines because of fear generated by the current unpredictable liability lottery they face in this country. We should ask the millions of Americans suffering from heart disease, AIDS, cancer and other deadly illnesses whether there is an urgent need to unleash medical innovation and discovery by reforming the current system.

Today, standards of liability vary from State to State, and sometimes even from Court to Court within a State. Neither the injured individual, the product manufacturer, nor the seller has any idea what liability standard will be applied, and all are subjected to conflicting rules on their responsibility in the use, design, production, and sale of products. The legislation before us establishes clear guidelines for determining who shall be responsible for harm caused by an accident. Uniformity is essential in order to provide fairness and predictability to consumers, manufacturers, and sellers. Although tort law is generally considered a matter for the States, it has been clear for quite some time that, due to the interstate nature of the sale of products, liability reform should be dealt with at the Federal level.

It is time to recognize that America will never be the best place in the world to create a job until we reform our current product liability system. It is time we provide the reform necessary to unleash American ingenuity in the development of new and more effective products, create jobs, increase our international competitiveness, and provide fairness to product consumers, sellers and manufacturers alike. Enactment of the proposals put forth in H.R. 956 will form the basis of strong and effective legal reform which will loosen the grip of lawyers on America. These commonsense reforms are necessary to ensure that American consumers, manufacturers, product sellers, employers and employees alike receive fairness and justice under our civil justice system. The time has come to end lawsuit abuse in America.

Mrs. COLLINS of Illinois. Mr. Chairman, I am dumbfounded that this bill to restrict the rights of victims and consumers to adequate compensation for and reasonable protection from injury caused by unsafe, down right dangerous, and sometimes even deadly products has been named the Common sense Legal Reforms Act. This bill absolutely turns common sense on its head.

Tell me, Mr. Chairman, is it common sense that the greatest leniency will be reserved for manufacturers of products that hurt children? That's what this bill will do. Is it common sense that a pharmaceutical company could face lower penalties if its product kills a senior citizen rather than a middle-aged man? That's what this bill will do. Is it common sense that victims of hazardous and unsafe products will have less of a chance to recover damages if they are women, or poor? That's right—this bill will do that too.

Most importantly, do the American people really think that it's common sense to take away the power of our most democratic institution—the citizen jury—to impose deterrents against unsafe products and practices? I think not.

It's not hard to sell common sense reforms to the American people but supporters of this bill should be ashamed to put that label on a package of tricks that are crafted to increase corporate profits at the expense of the most vulnerable in our society. Perhaps the most dangerous product around these days is this bill, and when people get a chance to look inside the box and see what's really there they will be outraged. The Members of Congress who vote for it, however, will ultimately have to answer to the consumers, which is more than you can say for negligent manufacturers if this bill passes.

One of the most troubling aspects of H.R. 956 is the rule for calculating punitive damages, setting a cap at three times the amount of economic loss, or $250,000, whichever is greater. This bill establishes appallingly unequal penalties based not on the severity of the harm caused or the extent of negligence or even malice, but on the income of the victim.

Punitive damages have a positive impact on decisions made by product manufacturers and sellers. The Conference Board, a business-funded research organization, surveyed companies about the effect of strong product liability penalties on their operations. They reported, managers say that products have become safer, manufacturing procedures have improved, and labels and use instructions have been more explicit.

Yet by tying the amount of punitive damages to monetary loss alone, and not noneconomic damages like pain and suffering,

this bill takes away the threat of heavy punitive damages for products that severely hurt people with low-income, or no-income, like kids.

Think about it. Under this bill, if a product kills a child, punitive damages, regardless of the situation, will be capped at $250,000 since there will be no lost earnings to calculate as monetary losses.

I worked hard during the 103rd Congress to improve product safety, especially for children. A child toy safety bill was one of the products of my efforts. Yet now we are seriously considering a bill that says that a toy manufacturer's concern about product safety might be diminished because the potential penalties are tied to the income of the victim. Large manufacturers and corporations will simply calculate punitive damages as defined under this bill as a small cost of doing business rather than attempt to improve the safety of their products.

Recently, a group of Illinois families joined together around their concerns about the lack of a safety latch on the rear hatch of a popular brand of mini-van. Since 1993, the National Highway Traffic Safety Administration has been investigating the rear liftgate of these vans because they fly open in crashes. According to the NHTSA, the latches failed to keep the rear hatches closed in at least 51 accidents, causing 74 ejections and 25 known deaths. Who rides in the rear seats of minivans? Kids, of course. This bill would mean that the van manufacturer probably does not need to worry about hefty punitive damages in civil actions. If the issue were the front door latch of a luxury sports car, a manufacturer would almost certainly pay more attention.

Is this common sense?

Harming senior citizens would also tend to carry lesser punitive damages under this bill, since their incomes tend to be less. Of course, senior citizens are big consumers of pharmaceutical drugs. With this bill the majority is setting a lower standard for safety for drugs marketed to seniors than for drugs marketed to the general population. Pharmaceutical manufacturers often say that fear of liability keeps them from marketing certain drugs. Does that mean that removing some fear of extensive punitive damages will lead them to market drugs to seniors that they might not otherwise sell? Is this really what the GOP wants to accomplish?

Is this really common sense?

Punitive damages are levied by juries as punishment for actions by manufacturers and sellers to deter the marketing of unsafe products. Therefore, punitive damages should be related to the severity of injury and the actions of the manufacturer or seller, not the economic status of the victim.

That is true common sense.

Unfortunately, the bill before us also sets up yet another dual standard for recovery of damages in a product liability case based on the income of the victim. The bill eliminates the doctrine of joint and several liability, which ensures compensation for an injured party even if one or more of the defendants are unable to pay, for non-economic damages.

Women, senior citizens, children, and low-wage workers are more likely to receive compensation in the form of non-economic damages rather than economic damages. Yet this bill says that if one of the parties responsible for hurting someone goes bankrupt, the victim cannot recover full compensation, regardless of what the jury says. Upper-income men, who are more likely to be awarded economic damages for loss of income, are not affected by this provision of the bill because joint and several liability for economic damages remains intact.

Consider a case where two people suffer an injury. One is a man, the other a woman. The man is a lawyer and receives his full compensation whether or not all responsible parties contribute. The woman is a homemaker, and so the compensation she receives could be severely limited if one of the responsible parties is unable to pay.

Is this fair? Is this common sense?

Are the Republicans saying with this bill that they don't value women, seniors, children, or the poor? You bet they are.

Mr. Chairman, I have just finished fighting a bill passed by this chamber which suspends all new Federal regulations, including those designed to protect the public from unsafe products. Now the majority has come forward with this effort to close the only remaining mechanism average citizens have to protect themselves. With one hand, they remove regulation, and with the other, they take away the power of citizen juries to control corporate behavior through the threat of punitive damages.

What next? I probably shouldn't ask.

The American people have plenty of common sense, and when they are able to step back and see the whole of what is being done here, they will know whose interests are being protected, and who is being sold down the river.

The leadership may want to call this bill the Corporate Profits Protection Act, or the Corporate Wrongdoers Protection Act, or even the "Profits Regardless of Who Gets Hurt Act," but they will find that the people are far too smart to let them call this the Common Sense Legal Reform Act for long. Its not hard to see why the majority wants to act so quickly on this bill. After all, you can't fool all the people all the time. And time is running out.

Mr. Chairman, the American people will be shocked when they find out what this bill calls common sense.

I urge my colleagues to reject H.R. 956.

Mr. DINGELL. Mr. Chairman, on March 10, the House passed H.R. 956, the so-called Common Sense Product Liability and Legal Reform Act of 1995. Unfortunately, the final bill distinguishes itself by not having enough to do with product liability reform and having very little to do with common sense. The bill is an extreme measure that makes sweeping changes in the Nation's legal system that go far beyond the scope of fair and balanced product liability reform. It protects wrongdoers at the expense of injured individuals. It excludes procedural safeguards designed to put U.S. companies on a more equal footing with foreign corporations. It creates extreme and rigid rules that fail to account for circumstances involving gross misconduct or severe and permanent injuries. It fails to simplify current law and creates a complex and confusing jurisdictional puzzle.

BACKGROUND AND COMMITTEE CONSIDERATION

I have long supported product liability reform legislation. In 1988, I presided over the infamous "Torts Class From Hell," when the Committee on Energy and Commerce spent 10 days in markup before reporting H.R. 1115.[1] since then, I have cosponsored major bills in the area and worked with Republicans and Democrats alike to enact effect and well-crafted legislation.

This year's legislation was not the result of meaningful bipartisan efforts. It was forced through the committees and the House at breakneck speed. H.R. 917 was introduced by Chairman OXLEY on February 13, 1995. It was the subject of one hearing.[2] No subcommittee markup was held. We were given 3 different substitute amendments in as many days prior to the markup on February 22. In Additional Views to the committee report, I cite examples of mistakes, defects, and inconsistencies found during this process.[3] These problems largely were the result of the severe timetable dictated by the Republican leadership. Given proper time and consultation with all Members, the Committee could have produced a better bill supported by a more significant bipartisan majority of the Committee.

H.R. 917, as reported, imposed more restrictions on product liability actions than previous bills, such as the bipartisan bill I cosponsored in the last Congress, H.R. 1910.[4] Punitive damages were capped at the greater of $250,000 or 3 times economic damages, whereas H.R. 1910 had no cap. It set a 15-year statute of repose applicable to all products, whereas H.R. 1910 had a 25-year statute limited to capital goods. It voided joint liability for noneconomic damages for all defendants, whereas provisions in H.R. 1910 applies solely to product manufacturers and sellers. It added new provisions that were not in H.R. 1910, including a section on pleading requirements and a narrow special interest provision to benefit biomaterials suppliers.

Despite misgivings, I voted to report the Committee bill. I did so because its core was consistent with bills I previously supported and because assurances were made that its shortcomings would be addressed when the bill reached the floor. But before the ink on the committee bill was dry, Chairmen HYDE and BLILEY introduced yet another bill, H.R. 1075. Apart from deleting the so-called FDA defense, its product liability provisions were similar to those in H.R. 917. But other provisions went far beyond product liability reform, including Title II applying to punitive damages "in any civil action for harm in any Federal or State court." This expansion of the bill was motivated by two interests: (1) to protect wrongdoers from punitive damages in nearly all civil cases, and (2) to open up the bill so that amendments unrelated to product liability reform would be germane on the floor.

FLOOR CONSIDERATION

The Republican leadership decided to muzzle meaningful debate long before any formal rule was adopted. Within moments after H.R. 1075 was introduced on February 28, Chairman SOLOMON announced that: the Rules Committee intended to make H.R. 1075 in order as a substitute for H.R. 956[5]; amendments to the bill should be submitted by March 3; and the Rules Committee intended "to grant a rule which may restrict amendments for the consideration of H.R. 956."[6]

Footnotes at end of article.

After its March 7 hearing to consider 81 amendments filed by the announced deadline,[7] the Rules Committee voted to report a gag rule.[8] The Committee made 15 amendments in order, allocated severe time limits for each, and prohibited amendments to the specified amendments. They chose to reject many moderate amendments, including those that had bipartisan support and would have undoubtedly passed. They refused to make in order amendments concerning the bill's preemptive effect on State laws, denying debate on one of the most important aspects of the bill. They made in order extreme Republican amendments applying to matters beyond the scope of product liability reform that have not been the subject of any hearings or consideration by any committee during this Congress.

The basis for product liability reform is that frivolous lawsuits are stifling American competitiveness and innovation; that because product liability is inextricably related to interstate commerce, a uniform, national approach is needed; and that "legislation should address key topics and provide a fair resolution of claims."[9] But the House bill goes far afield of fair and balanced product liability reform legislation.

PREEMPTION STANDARDS

H.R. 956, as passed by the House, creates numerous, varying standards for preemption of State laws that will create confusion rather than uniformity. Consider the following:

1. Under Title I (product liability actions), State laws are superseded "only to the extent that State law applies to an issue covered by this title."[10] It states that civil actions for "commercial loss" will be governed "only by applicable commercial or contract law,"[11] creating one standard for injured individuals and another for corporations that sue each other.[12]

2. Section 201 (punitive damages) applies to "any civil action brought in any Federal or State court on any theory where punitive damages are sought" but it "does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages." Section 203 (liability for noneconomic damages) applies to "any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought" but it "does not preempt or supersede any State or Federal law to the extent that such law would further limit the application of the theory of joint liability to any kind of damages." Sections 201 and 202 apply "[e]xept as provided in section 401," limiting their application to cases that "affect" interstate commerce.

3. Section 202 (noneconomic damages cap) applies to "any health care liability action brought in any Federal or State court on any theory" but it "does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages" nor does it preempt "any State law enacted before the date of enactment of this Act that places a cap on the total liability in a health care liability action." It also applies "[e]xcept as provided in section 401."

4. Section 401 of the bill provides that "Titles I, II, and III shall apply only to product liability and other civil actions affecting interstate commerce."[13]

Anyone claiming the bill creates uniformity is sadly mistaken. It makes rules, exceptions to rules, and special rules that, if enacted, would take years of litigation to sort out. The rules governing product liability actions in Title I are relatively clear, although their relationship to title III needs clarification. Sections 201, 202, and 203 promote restrictions on noneconomic and punitive damage awards rather than consistency in the States. They preempt State laws except where State laws "further limit" the subject of such provisions, creating an elusive measure subject to varying interpretations. For example, do State laws requiring proof beyond a reasonable doubt for punitivedamages but that do not cap such damages "further limit the award of punitive damages"? Likewise, the purpose of section 401 is unclear and its application difficult. It purports to prohibit preemption of State laws where "pure" State cases are involved—that is those involving parties and claims that do not "affect" interstate commerce. Is this a bone being thrown to the concept of States' rights or is there some other reason to treat identical cases differently if a court determines one "affects" interstate commerce while the other does not? And the special rule in section 202(b)—prohibiting preemption of a previously enacted State law that caps total liability in health care liability actions—apparently is motivated by the desire to preserve one specific California law.

Amendments that would have improved or affected the bill's preemption provisions were not made in order by the Republicans on the Rules Committee, including: (1) Representative QUILLEN's amendment to limit product liability rules in the bill to cases in Federal court; (2) Representative SCHIFF's amendment to make title II applicable solely to product liability actions; and (3) Representative DEUTSCH's amendment to require uniformity in State laws governing joint liability for economic loss and punitive damage awards. It is clear the Republicans did not wish to even debate the important issues pertaining to the bill's application to State laws and instead chose to concoct a complicated scheme that creates more disorder than consistency.

THE COX AMENDMENTS

The House adopted two amendments offered by Representative COX. The first abolishes joint liability for noneconomic damages and applies to "any product liability or other civil action brought in State or Federal court."[14] I could not support this broad expansion of the bill for the following reasons:

1. It was not considered by either committee nor were any hearings held on the amendment. Under the rule, 40 minutes were allocated to debate fundamental changes the amendment would make to more than 200 years of American jurisprudence.

2. It expands the bill far beyond product liability cases, abolishing joint liability in any State or Federal case affecting interstate commerce. I am particularly concerned that it treats simple negligence in the same manner as intentional and gross misconduct. Is it unfair to hold one of several wrongdoers fully responsible for noneconomic harm if he maliciously caused harm? Should victims of intentional torts such as assault, battery, and intentional infliction of emotional distress bear any costs for harm instead of holding fully responsible any single wrongdoer who proximately caused the harm?

3. Examples cited in support of the amendment included defendants found to be minimally at fault who, under joint liability laws, would be fully liable if other defendants were insolvent or absent. But it abolishes joint liability for even those who are principally at fault. Amendments that would apply several liability only to minimally responsible defendants were not made in order, denying Members any option to consider more moderate provisions.[15]

4. Proponents emphasized that it applies only to noneconomic damages and that it would not affect actual damages. The subtext here is that noneconomic damages are not as easy to calculate as economic damages and thus are not as real. The amendment even renames Title II as "Limitations on Speculative and Arbitrary Damage Awards." But it fails to recognize that pain and suffering, total disability, permanent disfigurement, loss of reproductive capacity, and similar noneconomic harms are a very real part of many injuries. For those with low or moderate wages, noneconomic damages may be a greater part of total losses. By limiting recovery for noneconomic damages, the amendment treats injured middle- and low-income workers, homemakers, retirees, children, and disabled persons less favorably than corporate executives and others who have large economic losses.

The amendment also struck a provision in H.R. 956 (section 109) requiring foreign manufacturers to appoint a U.S. agent for service of process in order to claim the benefits of the legislation. Section 109 was truly a commonsense provision designed to level the playing field between foreign corporations and American companies.[16] By striking it, the House also gutted the previously adopted Conyers amendment subjecting foreign companies to discovery in our courts, giving those foreign companies a distinct advantage over American companies, and making it more difficult for persons injured by foreign products to obtain relief. Reflecting a strong bipartisan consensus, 258 Members voted in favor of the Conyers amendment,[17] but this bipartisan effort was nullified by the Cox amendment. Because of the speed of the proceedings and incorrect claims by Mr. COX and others that striking the service of process requirement would have no effect on the Conyers amendment, Members did not have an adequate opportunity to understand the situation. Restoring the service of process provision was one of two items in the motion to recommit, which received 195 votes. Had there been sufficient time to explain the true effect of the amendment, I am confident the motion would have been adopted.

The second Cox amendment limits noneconomic damages in "health care liability actions" to $250,000.[18] This provision goes well beyond medical malpractice cases, and includes any civil case in State or Federal court against a health care provider, any entity obligated to provide or pay health benefits, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, where a claimant alleges a claim "based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product."[19] No hearings were held on the amendment nor was it considered by either committee. Only 40 minutes of floor time were allowed to debate this fundamental

change in our legal system. An alternative amendment encouraging resolution of such cases by mediation and arbitration was not made in order by the Rules Committee.

The amendment arbitrarily caps noneconomic damages at $250,000, striking hardest at vulnerable individuals whose main damages are noneconomic. It prevents compensation even in the most extreme cases, such as loss of sight or other senses, loss of reproductive capacity, loss of limbs, and loss of life. The most jaded argument made by its proponents is that the amendment constitutes health care reform. Arguably, the amendment gives license to doctors and other health providers to make mistakes and practice bad medicine. It may provide a financial windfall to physicians, manufacturers and sellers of drugs and devices, and other health care providers who injure persons, not to mention health insurance companies that deny health claims in bad faith. None of the alleged savings from the amendment are redirected in adjustments to Medicare and Medicaid payments or reduced private health insurance premiums. It does nothing to deter litigation and limits the ability of injured persons to receive compensation for harm caused by health care professionals and providers. If this is health care reform, we are all in great peril.

THE FDA DEFENSE

The House passed an amendment immunizing manufacturers and sellers of drugs and medical devices from punitive damages if the drug or device was approved by the Food and Drug Administration [FDA] and the manufacturer or seller has not misrepresented or withheld information required to be submitted to the FDA or has not bribed an FDA official.[20] While I previously have supported such a provision, I am compelled to reconsider my position due to the Republican leadership's stated desire to change FDA's approval process radically, to privatize functions of the agency, to reduce its funding, or even to eliminate the agency.

The FDA defense is based on the idea that FDA approval is meaningful and effective. It assumes a strong, vigorous, and adequately funded FDA. It is entirely inconsistent with the vision of a weak agency whose primary focus is to get products on the market as fast as possible based on weakened standards of safety and efficacy. Americans trust that when they take a drug or use a medical device, it will not harm them. This trust is based on a careful, scrupulous process that allows only safe, effective products on the market and removes products from the market when they may pose harm. I am committed to continuing efforts to ensure that FDA is an agency in which we may all place our trust. But I find it difficult to support the FDA defense when the Republican leadership and interest groups are pulling out the long knives to drastically alter the mission and slash the already limited resources of the agency.

OTHER PROVISIONS

Statute of repose.—The 15-year statute of repose in the bill is significantly more restrictive than previous bipartisan bills. It applies to all products, instead of only capital goods, subject to limited exceptions.[21] H.R. 1075 also limited it to cases where "the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses."[22] This provision was intended to ensure that claimants would not be completely foreclosed from at least recovering medical expenses where an older product causes harm. But an amendment offered by Mr. HYDE and passed by the House struck this commonsense provision from the bill. This mean-spirited amendment is further evidence of the Republicans' extreme views. It increases public costs and places uninsured workers and others at risk. Nor has any adequate explanation been offered as to why the provision should apply to all products instead of capital goods alone or why an absolute limit of 15 years makes sense in each and every case. An amendment filed by Mr. BRYANT would have created a statute of repose based on a resumption of 15 years. Under the amendment, the presumption could be rebutted if the claimant could prove the defendant concealed or failed to give adequate warning of a defect that he knew about or if the claimant was required to use the product as a condition of employment. This amendment was not made in order. Because the statute's application is so severe, these issues deserve further scrutiny.

Punitive damages cap.—The bill caps punitive damage awards in any civil case for harm in any State or Federal court at the greater of $250,000 or 3 times economic loss.[23] An amendment to delete the cap was made in order and defeated by the House,[24] but other moderate amendments that enjoyed bipartisan support were never considered under the gag rule adopted by the Rules Committee. For example, Chairman OXLEY and Representative GORDON filed an amendment to replace $250,000 with $1 million. It is my firm belief that, if made in order, the Oxley/Gordon amendment would have passed. Other amendments put the minimum at $500,000 or allowed punitive damages based on three times compensatory damages. Given the required quantum of proof (clear and convincing evidence), new procedures that benefit defendants (separate proceeding for punitive damages and standards for determining awards), and the type of conduct involved (conscious flagrant indifference to safety of others or intentional conduct), the cap on punitive damages in the bill may be too severe to adequately address actions by those who engage in gross misconduct.

Biomaterials suppliers.—Title III of the bill limits the liability of biomaterials suppliers in certain circumstances. During committee markup of a similar provision, I questioned the wisdom of insulating suppliers even if they had intentionally and wrongfully withheld material information or if they knew of fraudulent or malicious activities in the use of their supplies. Mr. HASTERT, the author of the amendment, and others indicated their desire to try and address these concerns before floor consideration. I was pleased to see an effort to accommodate these matters in H.R. 1075 (section 302(c)(2)(B) and (C)). While I filed an amendment to make technical and other clarifying changes to Title III, I decided to withdraw it when it became evident that there were many other problems with this title. I support a fair and balanced provision to ensure that biomaterials suppliers are not subjected to needless harassment, but I do not believe it should be converted to a wholesale abolition of all responsibility by such persons, particularly if these suppliers are significantly at fault for a claimant's injuries.

SUMMARY

The issues involved in product liability reform are complex and controversial. While Federal legislation is needed, I firmly believe any such legislation must be fair and balanced. H.R. 956 does not pass this test. Nor can it be considered in a vacuum. H.R. 988, passed shortly before H.R. 956 was considered, applies to certain Federal civil cases. The bill requires the "loser" to pay the opposing party's attorney fees under certain circumstances, amends rule 11 of the Federal Rules of Procedure to mandate sanctions a Federal judge must impose against lawyers who file frivolous lawsuits or engage in abusive litigation tactics, and limits the admissibility of certain scientific testimony of expert witnesses. These provisions, if enacted, would apply further limits on certain product liability actions, health care liability actions, and other civil actions for harm filed in Federal court governed by H.R. 956. H.R. 988 further tilts the balance in favor of defendants in all such cases.

Cheap sound bites and anecdotal examples of extreme results—while more easily understood than the details of these complex and controversial issues—do not serve the public interest. Both proponents and opponents of legal reform legislation have used such tactics to justify their respective positions. But the Republican majority has a public responsibility to be careful in its drafting and, above all, to do harm. Instead, it artificial and unrealistic timetable for passing legal reforms made speed more of a priority than crafting sensible and defensible legislation.

I plan to work with my colleagues on both sides of the aisle and on both sides of Capitol Hill to enact fair and balanced product liability reform legislation this year. But in doing so, I refuse blindly to support extreme legislation that is contrary to common sense.

FOOTNOTES

1. H. Rpt. 100-748, Part 1.

2. Hearing on H.R. 917, the Common Sense Product Liability Reform Act, including related product liability legislation, Feb. 21, 1995, Subcommittee on Commerce, Trade, and Hazardous Materials.

3. H. Rpt. 104-63, Part 1.

4 H.R. 1910 Republican cosponsors included: Representatives Gingrich, Hyde, Bliley, Moorhead, Oxley, Barton, Hastert, Upton, Stearns, Paxon, Gillmor, Klug, Franks, and Greenwood.

5. H.R. 956 was a bill referred to and reported by the Judiciary Committee, H. Rpt. 104-64, Part 1.

6. Congressional Record, Feb. 28, 1995.

7. An additional amendment, filed by Chairman Solomon after the March 3 deadline, was considered but not made in order by the Rules Committee.

8. H. Res. 109.

9. Testimony of Victor E. Schwartz, Esq., on behalf of the Product Liability Coordinating Committee; hearing before the Subcommittee on Commerce, Trade, and Hazardous Materials Feb. 21, 1995.

10. Section 102(b), H.R. 956 (as passed by the House).

11. Section 102(a) and section 110(2), H.R. 956 (as passed by House).

12. An amendment filed by Representative Markey that would have treated commercial loss cases in the same manner as product liability actions was not made in order by the Rules Committee.

13. Sec. 401 defines "interstate commerce" as "commerce among the several states or with foreign nations, or in any territory of the United States or the District of Columbia, or between any such territory and another, or between any such territory and

any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation."

14. Congressional Record, Mar. 9, 1995.

15. For example, Representatives Frank and Berman filed amendments that would apply several liability to defendants found to be less than 20 percent responsible for the claimant's harm.

16. Section 109 of H.R. 1075 was entitled "Service of Process" and provided: "This title shall not apply to a product liability action unless the manufacturer of the product or component part has appointed an agent in the United States for service of process from anywhere in the United States." This section was deleted from the bill by the Cox amendment.

17. Congressional Record, Mar. 9, 1995.

18. Congressional Record, Mar. 9, 1995.

19. Section 202(b), H.R. 956 (as passed by House).

20. Section 201(f), H.R. 956 (as passed by House). See, Congressional Record, Mar. 9, 1995.

21. Section 108(b)(2), H.R. 956 (as passed by House).

22. Section 108(a), H.R. 956 (as passed by House).

23. Section 201(b), H.R. 956 (as passed by House).

24. Amendment offered by Representative Furse, Congressional Record, Mar. 9, 1995.

Mr. HYDE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the SPEAKER pro tempore (Mr. LONGLEY) having assumed the chair, Mr. DREIER, 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. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, had come to no resolution thereon.

UNITED STATES SUPPORT FOR MEXICO—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 44)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Banking and Financial Services and ordered to be printed.

To the Congress of the United States:

On January 31, 1995, I determined pursuant to 31 U.S.C. 5302(b) that the economic crisis in Mexico posed "unique and emergency circumstances" that justified the use of the Exchange Stabilization Fund (ESF) to provide loans and credits with maturities of greater than 6 months to the Government of Mexico and the Bank of Mexico. Consistent with the requirements of 31 U.S.C. 5302(b), I am hereby notifying the Congress of that determination. The congressional leadership issued a joint statement with me on January 31, 1995, in which we all agreed that such use of the ESF was a necessary and appropriate response to the Mexican financial crisis and in the United States' vital national interest.

On February 21, 1995, the Secretary of the Treasury and the Mexican Secretary of Finance and Public Credit signed four agreements that provide the framework and specific legal arrangements under which up to $20 billion in support will be made available from the ESF to the Government of Mexico and the Bank of Mexico. Under these agreements, the United States will provide three forms of support to Mexico: short-term swaps through which Mexico borrows dollars for 90 days and that can be rolled over for up to 1 year; medium-term swaps through which Mexico can borrow dollars for up to 5 years; and securities guarantees having maturities of up to 10 years.

Repayment of these loans and guarantees is backed by revenues from the export of crude oil and petroleum products formalized in an agreement signed by the United States, the Government of Mexico, and the Mexican government's oil company. In addition, as added protection in the unlikely event of default, the United States is requiring Mexico to maintain the value of the pesos it deposits with the United States in connection with the medium-term swaps. Therefore, should the rate of exchange of the peso against the U.S. dollar drop during the time the United States holds pesos, Mexico would be required to provide the United States with enough additional pesos to reflect the rate of exchange prevailing at the conclusion of the swap.

I am enclosing a Fact Sheet prepared by the Department of the Treasury that provides greater details concerning the terms of the four agreements. I am also enclosing a summary of the economic policy actions that the Government of Mexico and the Central Bank have agreed to take as a condition of receiving assistance.

The agreements we have signed with Mexico are part of a multilateral effort involving contributions from other countries and multilateral institutions. The Board of the International Monetary Fund has approved up to $17.8 billion in medium-term assistance for Mexico, subject to the Mexico's meeting appropriate economic conditions. Of this amount, $7.8 billion has already been disbursed, and additional conditional assistance will become available beginning in July of this year. In addition, the Bank for International Settlements is expected to provide $10 billion in short-term assistance.

The current Mexican financial crisis is a liquidity crisis that has had a significant destabilizing effect on the exchange rate of the peso, with consequences for the overall exchange rate system. The spill-over effects of inaction in response to this crisis would be significant for other emerging market economies, particularly those in Latin America, as well as for the United States. Using the ESF to respond to this crisis is therefore plainly consistent with the purpose of 31 U.S.C. 5302(b): to give the United States the ability to take action consistent with its obligations in the International Monetary Fund to assure orderly exchange arrangements and a stable system of exchange rates.

The Mexican peso crisis erupted with such suddenness and in such magnitude as to render the usual short-term approaches to liquidity crisis inadequate to address the problem. To resolve problems arising from Mexico's short-term debt burden, longer term solutions are necessary in order to avoid further pressure on the exchange rate of the peso. These facts present unique and emergency circumstances, and it is therefore both appropriate and necessary to make the ESF available to extend credits and loans to Mexico in excess of 6 months.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 9, 1995.*

AMENDMENT FILING DEADLINE ON H.R. 1158 AND H.R. 1159

Mr. SOLOMON. Mr.Speaker, earlier today I announced a preprinting requirement for amendments to the two supplemental appropriations and rescissions bills, H.R. 1158 and H.R. 1159 and noted that amendments should be submitted for printing no later than Monday, March 13, 1995.

I now ask unanimous consent that Members have until 5 p.m. on Monday, March 13, which is a pro forma day to file their amendments for preprinting in the CONGRESSIONAL RECORD.

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

There was no objection.

PERMISSION FOR SUNDRY COMMITTEES AND SUBCOMMITTEES TO SIT ON TOMORROW DURING THE 5-MINUTE RULE

Mr. SOLOMON. Mr.Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

Committee on Economic and Educational Opportunities, Committee on Government Reform and Oversight, Committee on House Oversight, Committee on the Judiciary, and Committee on Transportation and Infrastructure.

It is my understanding that the minority has been consulted and that there is no objection to these requests.

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

Mr. DOGGETT. Mr. Speaker, reserving the right to object, we have consulted with the ranking minority member of each of those committees and subcommittees, and there is no objection.

Mr. Speaker, I withdraw my reservation of objection.

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

Mr. TAYLOR of Mississippi. Mr. Speaker, reserving the right to object, I had hoped, with the change in the House, this practice of Members being expected to be in three places at once would hopefully come to an end. Today, for example, I had a Committee on Government Reform and Oversight and a Committee on National Security meeting as we had some very important tort reform legislation going on on the floor.

Is it the intention of the Republican leadership to continue this practice for the remainder of the Congress, or at some time can we get to the point where Members can do one or maybe two things, and do them very well rather than running around like a bunch of chickens with our heads cut off?

Mr. SOLOMON. Mr. Speaker, if the gentleman will yield, I would say to him we are doing everything possible to get that Member home for the Easter break to have a work period. And once we have reached that April 8 date I would think that we would go back to the regular rules of the House and probably would not be making these requests, or very seldom.

Mr. TAYLOR of Mississippi. If I may, there are things that are more important than the Easter break. Passing well-thought-out legislation is more important than the Easter break, and I would sure hope the Republican leadership would keep that in mind.

Mr. SOLOMON. If the gentleman will yield, we certainly will, and I hope the gentleman has a happy Easter break when the time comes.

Mr. TAYLOR of Mississippi. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

THE REPUBLICANS' WAR ON KIDS

Mr. SKAGGS. Mr. Speaker, I would like to commend to all Members of the House a striking series of articles from the Los Angeles Times. They provide a poignant rejoinder to current House Republican doctrine that we can somehow cut school lunch and breakfast programs without really hurting anybody.

The articles tell the story of the kids from West Covina, CA, a place where the local school board decided not to participate in the school breakfast program. Let me just give an excerpt.

By 10 many mornings there is a long line outside the nurse's door. Some children clutch their stomachs, others their heads. In this mostly middle-class bedroom community, these children share a common ailment. They are hungry.

Phys ed teacher Barbara Davids sometimes fed 12-year-old boy who volunteered to help custodians pick up after lunch so he could salvage garbage scraps.

Another student got in trouble so he could be sent to the principal's office, where a jar of candies was perched on the desk. "I'm so hungry. I'm so hungry," sobbed the 12-year-old-boy dipping his hand into the jar. * * *

Mr. Speaker, I include these articles for the RECORD.

The articles referred to are as follows:

[From the Los Angeles Times, Nov. 20, 1994]

GOING TO SCHOOL HUNGRY

As poverty spreads, teachers often see students who have not eaten for days. Malnutrition hinders learning, but resistance to breakfast programs raises question of how far districts should go to help.

The symptoms have swept through Edgewood Middle School.

By 10 many mornings there is a long line outside the nurse's door at the West Covina school. Some children clutch their stomachs. Others grasp their heads. In this mostly middle-class bedroom community, these children share a common ailment. They are hungry.

One boy came into Assistant Principal Amelia Esposito's office last year and confessed to stealing food from a 7-Eleven store. "Every night I go to bed hungry." the 13-year-old told her, bowing his head. "There isn't enough food."

"It's scary how many kids here are hungry," says Esposito, who believes one in four children comes to class undernourished.

America's hunger is not the starvation of Somalia or Rwanda that galvanizes global attention: bloated bellies, emaciated arms, failing bodies along roadsides. Hunger here saps people in more subtle ways: families eat only once a day or skip meals for several days, causing chronic malnutrition. It is a problem that many researchers say eased markedly in the 1960s and '70s, but resurfaced with a vengeance in recent years.

Hunger, they say, afflicts up to 30 million Americans. Twelve million of them are children, many in recession-ravaged Southern California.

Their plight has emerged most publicly in the schools, where teachers delve into their own pockets to feed children whose ability to learn is being crippled by hunger.

Yet half of California's schools—including all 11 in the West Covina Unified School District—do not offer one ready remedy: breakfast, a federally funded entitlement. Nationally, 37% of the 13.6 million low-income children who get a subsidized lunch also eat a morning meal at school. In some districts, breakfast has been barred or eliminated by school officials who oppose it on philosophical grounds. Many in West Covina, where Christian conservatives dominate the school board, oppose feeding children breakfast at school, calling it anti-family and a usurpation of what should be a parent's responsibility.

"I want kids to eat at home with their families," said school board President Mike Spence. "Breakfast at school is just one more thing school districts do rather than allowing parents to take care of their children."

A suburb that blossomed from orange groves in the San Gabriel Valley after World War II, West Covina, the "City of Beautiful Homes," is an unlikely haven for hunger. In the 1980s, however, teachers watched as lost jobs, an influx of new-comers from the inner city and an increase on single mothers left many students living hand-to-mouth. Although the median family income in West Covina is $51,000, there are pockets of poverty: one in four single mothers lives on less than $14,800 a year.

Although the shifts in West Covina are hardly unique, the town's emerging economic stratification has made hunger highly visible in the schools.

The number of students qualifying for free or reduced-price lunches at Edgewood, the district's only middle school, has surged to nearly two-thirds from one-third a decade ago.

Among them is Cristina Yepez, a soft-spoken 12-year-old with freckles and wide-set blue eyes, who spends some mornings at the school health office complaining of stomachaches. Last year, she says, she got dizzy on the playground, crumpling onto the blacktop at Merced Elementary. She had had no breakfast that day. Dinner the night before was a potato.

"A lot of times, we have just break," says Cristina, gently combing the silky red hair on her Little Mermaid doll as her family prepares for an evening's meal. "Sometimes, I get really hungry. But there's nothing more to eat. I go to my friend's house and pretend to play and say: 'Oh, can I have something to drink?'"

Cristina sits down with her mother, Darlene, and sister, Jesseca, 13, for dinner. It is their only meal today. One hot dog each, and water. Darlene Yepez, 38, who is divorced, was sidelined from a forklift job by a back injury but is searching for work. Meanwhile, the family survives on $607 in welfare and $130 in food stamps, which run out halfway through the month. Swallowing her pride, the mother has gone to West Covina's food pantry—but has used her five allowed visits. A few times, the girls have gone up to three days without food, she says, quietly beginning to sob. The last two weeks, she says, they have had one meal.

Studies show that hungry students are fatigued. They cannot concentrate. They do worse than their peers on standardized tests. Because they are ill twice as often, they miss class more frequently.

"They are dazed. You can see it in their eyes. Sometimes, their hands tremble," says Edgewood teacher Kim Breen, who estimates that three-quarters of her students arrive without eating breakfast. Some do not have the energy to raise their heads from their desks. One girl broke down last year in class, her hands shaking, describing how she had gone all weekend without eating.

Kathi Jennings sees hunger's toll daily at Edgewood, which has about 1,800 students. Knowing many of them are undernourished, she keeps a choice of rewards for daily tasks on her desk: a baseball card, a small top or a cup of applesauce. Many kids choose food.

Two guards who patrol Edgewood's playground say one 13-year-old girl chases their green security cart, asking for food. Physical education teacher Barbara Davids says she sometimes fed a 12-year-old boy who volunteered to help custodians pick up after lunch so he could salvage garbage scraps.

Another student got in trouble regularly so he could be sent to the assistant principal's office, where a jar of diabetic candies is perched on her desk. "I'm so hungry. I'm so hungry," sobbed the 12-year-old boy, dipping his hand into the jar and stuffing six candies into his mouth.

Hunger plagues many U.S. schools. More than a quarter of elementary schoolchildren come to class without breakfast, said Doris Derelian, president of the American Dietetic Assn.

The Los Angeles Unified School District, like many urban areas, has long served breakfasts so the problem on those campuses is less pronounced.

Rural and suburban districts are less likely to serve a morning meal. In the Baldwin Park Unified District, nearly half of 16,000 visits to the school nurse last year were tied to hunger. Since then, the district has started offering breakfast at many of its schools.

The mounting toll in schools mirrors a resurgence in hunger, which studies show was brought under control in the '70s but grew by 50% between 1985 and 1991. Even for Americans with jobs, a growing percentage—now nearly one in five—work full time but earn less than the poverty level.

Divorce and out-of-wedlock births left children, along with their mothers, the nation's biggest losers. More than one in five children live in poverty, and almost a quarter of low-income children in the United States are anemic—a condition linked to inadequate or poor nutrition. Government cuts have not helped: median Aid to Families With Dependent Children benefits for a family of three have dropped 47% since 1970. California food stamp payments average 70 cents a meal, slightly more than half of what the U.S. Department of Agriculture says it takes to get an adequate diet.

In an effort to assess the extent of hunger in America, the federal government has launched its first tally on malnutrition. Results from the survey of 60,000 households are expected to be released in 1996.

Recent academic research already has focused on the effects of hunger in the classroom. A 1993 Tufts University study said hunger is stunting cognitive development as lethargic children disengage from learning, and warned that "our country may be heading for a crisis of enormous proportions."

"Health and nutrition are powerful determinants of educational competence," says Ernesto Pollitt, a UC Davis human development professor. His 1993 study found that anemic and iron-deficient toddlers lag behind their peers in mental development by up to 25%. Nonetheless, Pollitt said he is surprised to find that many schools do not serve breakfast and ignore the effects of hunger on the ability to learn.

A study of 1,023 public schoolchildren in Lawrence, Mass., found that when schools started to serve breakfast, students' standardized test scores rose, and absenteeism and tardiness declined. Math, another study shows, is hardest hit when children are not given a morning meal.

"Scientific evidence shows that if you don't do this, you are undermining the very reason for your existence, which is to educate children," says J. Larry Brown, director of the Tufts University Center on Hunger, Poverty and Nutrition Policy.

At Edgewood school, mid-morning is the worst, said science teacher Breen. "How many eat three meals a day? Two? One?" Breen asks her class. Most say they eat twice, some only once. It is her annual informal body count on hunger, and the results are more grim each year. Breen estimates a sixth of her students are hungry regularly.

"I have to repeat instructions two or three times," she says. "I try to teach them physics, but I can't." By second period, a boy in the third row drops his head to his desk. "I just leave them alone. They aren't going to get it," Breen says, her voice full of frustration.

Just before lunch, a 14-year-old girl rises from her desk and slowly approaches her teacher. She says she has not eaten in two days. Earlier, on the playground, she nearly fainted, dizzy from lack of food. "Could I have 50 cents?" she says quietly so the other children can't overhear. "I'm hungry." Breen—who often gets requests for food—fishes out four quarters. The girl, who has not yet been issued a card that will allow her to get a free lunch, still lacks enough money to buy one. She eats what she can: a bag of Doritos from the school vending machine.

"I keep my own stuff," says the school health clerk, Deborah Paschal, swinging open the office cabinet. Sandwiched between the Band-Aids and medicines are peanut butter, crackers and boxes of juice, all purchased with her own money. Counselor Pamela Clausen sometimes gives away her sack lunch. Physical education teacher Barbara Davids occasionally brings in grocery bags of food. When she runs out, or does not have money, she sends children to the cafeteria with a note: "Feed this kid."

Throughout southern California, teachers like Ernie Sanchez are picking up the slack. When he was a second-grade teacher at Vejar Elementary School in Pomona, Sanchez spent the first period each morning making cheese sandwiches for every student. If he had no cheese, he scooped a cup of cereal into a napkin on each child's desk.

Once, he brought apples to the school, where 99% of the children qualify for free or reduced-price meals. "All these little hands reached out toward me," says Sanchez.

"We don't have food sometimes," says one 13-year-old Edgewood student, nervously adjusting her glasses. Asked what her mother does, the girl said. "She stays in the house and watches TV every day." Her father? "He takes drugs. That's why my mom threw him out."

But most, Esposito says, suffer because their parents have been laid off, work long hours and leave their children to fend for themselves in the mornings, or work at jobs that barely cover the rent.

Lisa Drynan, 32, was recently laid off from her administrative job at an engineering firm, the second position she's lost to "downsizing" in three years. She is again searching for work. Drynan has gone up to two days at a time without food. Her three boys, Kevin, 3, Kenny, 9, and Keith, 11, who attends Edgewood, often eat once or twice a day. The night before, says Drynan, staring inside her bare refrigerator, her three sons split two hot dogs.

"There are many days I don't have anything for them for breakfast," she says in her tidy apartment, where the toys are lined up outside the front door. Even though she buys generic brand foods, her $102 in food stamps each month run out after 2½ weeks. Drynan, who is divorced, has used up her five trips to the West Covina food bank. "I know food is important. But I know we need a roof over our heads more," she says, adding that most of her income goes to the $690-a-month rent, bills and collection agencies to pay off thousands of dollars in medical costs owed from one son's head injury.

"I'm hungry," says Kevin, tugging at his mother's white T-shirt. Drynan has heard that her 3-year-old ventures to neighbors' homes, asking for food. She pulls out a Popsicle—the last bit of food in her freezer—and gives it to Kevin, who consumes the treat in seconds.

Kenny, a skinny boy with big brown eyes, laments not having had his favorite food, pork chops, since his birthday in March. At school, he says "in the mornings, I get real hungry." By 10:30, he begins a daily lunchtime countdown, eyes focused on the classroom clock. Other children sit down after morning recess for snack time—a treat from home. "They read us a story, or we do our work. I just have to work. I don't have a snack," Kenny says quietly. "I get hungry when I look at them.

Drynan knows hunger afflicts other families in her neighborhood, even those in which the parents have jobs. When Drynan sent her children for a sleep-over to Susie Ballard's house across the street, they were told to eat supper at their own home, then come over.

Ballard, 38, whose daughter Kristin attends Edgewood, explains that although she works, she cannot put three meals on the table for her own three children, much less visitors. Ballard, whose marriage broke up two years ago, lost her long-time job as a pizza company training manager. Work as a cleaning lady barely covers the rent. Half the month, there is no breakfast. Ballard stretches a pack of spaghetti into three meals, thinning down the red sauce with cans of water.

"There are nights I tell the kids: 'I'm not hungry. You eat.'" says Ballard, nervously smoothing the lace doily on the apartment's living room table. She gives the kids Kool-Aid to fill their bellies. Fresh fruit, vegetables and coffee are luxuries of the past.

"I tell them: 'If someone offers you a free meal, take it, take it.' I used to go to bed crying every night. I feel a failure to them. I ask: How can they look up to me?"

Kristin, 13, is curled up in a chair in the corner of the sparsely furnished but immaculate apartment. "If the food was there, I would eat more," she says shyly.

Anti-hunger advocates are waging a coordinated, nationwide campaign in a school-to-school battle to get the tens of thousands of schools without breakfast programs to sign up. Without breakfast in schools, the $16 billion California spends on elementary and high school education may be wasted money, Assemblywoman Gwen Moore warned in a January letter to colleagues, prodding them to push the program in their districts. Twenty-one states—including New York and Texas—now mandate that all or some of their schools serve breakfast. Bills to make breakfast mandatory in California schools have failed, partly because they are viewed by some legislators as coddling immigrant children.

In La Habra, a recently implemented breakfast program has made teaching more productive. Morning stomachaches used to afflict half her students daily, said Maria Vigil, a Las Lomas elementary kindergarten teacher. "They were all nauseous" and lethargic, she said. Her office brimming with more than a dozen hungry children by mid-morning, Las Lomas Principal Mary Jo Anderson found that for 10% of the students, school lunch was their only solid meal. "I their tummies hurt, their brains can't work." Anderson says. School breakfast she adds, resulted in a 95% drop in disciplinary problems. "They are calm, happy. They aren't angry. They aren't hurting. It's like a miracle."

"Teacher! I am going to eat!" children yell at Vigil as they spill out of yellow school buses. Sandra Andrade, 5, races from the parking lot, grabs her green meal ticket, then rushes to the wire screen window, waiting impatiently for her tray of milk, juice, cereal and string cheese. Unemployed father Roberto Andrade—who some days can't scrounge up the gas money to search for work—hovers over the school breakfast tables, where four of his children who attend Las Lomas share their food with his other three younger children. "Without this, they

might not eat some days," says the handyman. Three-year-old Eduardo devours a packet of graham crackers with his sister Sandra.

The focus on food is everywhere. As soon as class starts in Vigil's Room 6, she notices that 6-year-old Jonathan Quintana is irritable and crying. Vigil's hand dives into a desk drawer and pulls out a bag of crackers: "Let's get you a little cereal, OK?"

Jonathan is ushered to a table, seated next to his teddy bear, and given cereal, juice, milk and more crackers. The lesson quickly continues. Jonathan's sobs become more infrequent. He sniffles. By 9, he is seated with the other students, at work on lessons about the calendar and the weather.

As Vigil offers each child a animal cracker from a large jar. Jonathan cheerfully plays with Legos. Even as lunchtime approaches, children attentively listen to Vigil's rendition of "The Three Bears," jostling to see the book's pictures. Later, Alberto Cueva. 5, savors his lunch—a burrito, followed by corn and milk—before his half day of school ends.

"Sometimes, we eat at night," says the boy, urgently shoveling the burrito into his tiny mouth. "Sometimes we don't."

SCHOOLS DEFEND DECISION AGAINST OFFERING BREAKFAST

Although school breakfast programs could help many children, there are many reasons why schools do not offer a morning meal.

Logistic barriers can be a nightmare, said Wanda Grant, food services director for El Monte City School District. Her district, which serves breakfast at its 18 schools, had to shuffle bus schedules, buy trucks to haul more food supplies and deal with water heaters that could not handle bigger dishwashing loads. Food service directors, principals and custodians usually do not jump at the chance to do more work for the same pay.

However, schools that want to offer breakfast find a way. When the Riverside Unified School District could not juggle bus schedules, it offered breakfast pizza and pancakes on the school bus.

Often, philosophical objections are the bigger obstacle. Many people believe parents, not taxpayers, should provide something as basic as breakfast for their children. If schools take on more duties—offering sex and drug education, for example—won't that encourage parents to abdicate more responsibilities?

In a case that attracted widespread attention, the Meriden, Conn., school board, arguing that children should eat at home with their families, repeatedly voted down school breakfast programs from 1990 to 1993—flouting a 1992 school breakfast state mandate until there were sued by the state attorney general.

A survey this year by the California Department of Education, which allocated only a third of the $3 million in breakfast start-up grants last year because of a dearth of applicants, found that many principals and superintendents voiced philosophical objections to breakfast programs. "The parents have some responsibility for these kids. It's not the schools' job to be all things to all people," one principal wrote.

Since the 1980s, Shyrl L. Dougherty, the nutrition services director for Montebello Unified, has prodded four of 26 schools balking at serving breakfast. In one school, 98% of the children would qualify for free or reduced-cost morning meals. "How much are we supposed to do for families?" one principal protested to Dougherty.

Only about a tenth of students in Orange County's second-largest district, Garden Grove Unified, get free or reduced-price breakfasts, although half qualify.

"What's next? Are we going to provide housing for these people too?" one principal asked the district's food services director, Karen Papilli.

In the West Covina Unified School District, many administrators and teachers believe the decision not to offer breakfast is rooted in conservative attitudes. The school board begins its meetings with Christian prayer.

"We have a conservative school board. They are very concerned about the role of the school," said Mary J. Herbener, the district's child welfare and attendance supervisor. Merced Elementary Principal Janet Swanson said: "Breakfast is a hot potato. It's a political issue."

Edgewood Middle School Assistant Principal Amelia Esposito said she has pushed for breakfast for three years. "This board is stuck in the '60s. Lunch is OK, but breakfast is controversial."

Anthony Reymann, who calls himself the board's lone liberal, sizes up his colleagues' reaction to a breakfast program: "They will say: 'Ultimately God put parents on this earth to take care of their children. By God, that is what they should be doing.'"

The board's conservative president, Mike Spence, said: "The government is trying to usurp the responsibilities of the parent. There is a trend to take over aspects of what the family does."

"Schools need to educate," said Susan Langley, the West Covina School District Council-PTA president. She says parents should turn elsewhere for food assistance. "We are really big on self-help." Some teachers are skeptical as well. One told Esposito: "If they (parents) weren't on drugs, their kids wouldn't be hungry.

Since bringing in breakfast last year at Santa Ana's Pio Pico Elementary School, the droves of hungry children who arrived at Principal Judy Magsaysay's office sick with hunger in the morning have disappeared. Teachers are astounded at the difference in the classroom: 10 to 11:30 a.m., once dead time, has become a fertile learning period.

Magsaysay said she knows the difference the meals make when she watches students return from month-long vacations visibly thinner. Twenty-five children line up against the cafeteria's outer wall by 6:45 a.m. for breakfast. Sometimes the cafeteria lady runs late. When she finally swings open the door, the children clap and cheer.

THE FOOD ANGEL OF 42ND STREET

Mae Raines loads an old pickup with donated food and hands it out in some of the city's poorest areas. 'When I can ease someone's pain, I feel good,' she says.

To the children running excitedly after her rusty blue 1978 Dodge pickup for a piece of bread, or an orange, she is Mother Raines or the Muffin Lady.

Mae Raines' food truck pulls to a stop in South-Central Los Angeles and she begins the task of easing hunger. "A lot of kids don't know what a snack or lunch is," says Mae, who watches some children devour whole bags of bread. Women sometimes sob when she puts food in their hands. Men bow their heads and say thanks.

At 71, when most are quietly enjoying their golden years, Mae spends her time hauling truckloads of food to some of the most dangerous streets in Los Angeles, places many people in the City of Angels avoid. In her mind, she is simply a good Christian. "God said: Take care of the poor and the widows. I do what the Word says," says Mae, a widow herself. To her neighbors, she is the food angel of 42nd Street.

On a crisp autumn morning with wisps of clouds in the sky, Mae arrives at the Los Angeles wholesale produce market's "charity dock," where she gets donations of fruits, vegetables and bread. An ample woman, Mae—clad in flowing purple culottes, black high-top sneakers and a royal blue beret covering salt-and-pepper hair—points two of her foster sons at boxes of food to load. The boys pile the scratched and scarred Dodge with loaves of bread, sweet corn, oranges, pumpkins, even doughnuts. And they never forget an item children in her neighborhood south of the Coliseum count on May to bring; English muffins.

"We need radishes, four boxes," Mae prods her foster son, Donell.

An hour later, Mae and the children scramble into the cab of the truck. The squeaky doors clang shut. She grasps her window and pushes it down by hand. Peering out the shattered windshield, she eases away from the concrete loading dock, heading south, through the warehouse district near Downtown, over two railroad tracks, past rubble-strewn lots and graffiti-marred walls, zigzagging into the heart of the city.

Rolling past low-slung houses, Mae's food wagon brakes at her first stop. Most who converge on her truck are very old or very young.

One 4-year-old boy, Minor Beli, can barely believe it when Mae holds out a box of doughnuts. "Do you want it?" she asks. For a moment, Minor hesitates, then reaches out, tightly grasping the box. His eyes look lovingly at the treat, then at Mae. Minor's mother, Ana Beli, 27, says she must often limit how much her children eat to stretch their food to the end of the month. "When I pay the rent, there is little left," she says.

The Belis pay $350 a month for a room in a house they share with another family. Her husband works for minimum wage as a garment worker. Last night, she says, Minor, 2-year-old Jennifer and Angel, 7 months, ate one egg each.

Mary Lou Ellis, an 83-year-old with tufts of gray hair peeking out from under her cap, hobbles down the block to Mae's truck. Mae thrusts a bag of bread, radishes and tomatoes into trembling hands. "Oh lordy, lordy. Thank you! Thank you!" the woman says, beaming at Mae.

The former Lockheed Corp. riveter and housecleaner says that there often isn't enough food, so she skips meals. The rent eats up $400 of her $645 Social Security check. Utilities consume most of the rest. Someone swindled her out of her meager retirement savings, she says. Her house was emptied of furniture in a recent break-in. She leans heavily on her brown cane and stares hard at the ground. "I've never lived like this," she says, confessing to no one in particular. "I feel like taking a gun and shooting my brains out."

The stooped woman hobbles away. But as word gets out, her neighbors emerge from their homes, creating a crowd. "Are you selling this?" one woman asks. Mae turns to her with a warm smile. "No," she says. "I'm giving it away."

"Oh! There's my girl," Mary Washington squeals at Mae, who has helped her ever since she fell and broke her neck a decade ago. A former cook and janitor, she points to a long surgical scar that runs the length of her neck. Her head tilts to the side. Ever since the accident, seizures have made it hard to keep a job.

"She'll dress you. She'll feed you," she says, striking Mae's shoulder as her friend

fills a bag with radishes and corn. Each month, she tries to survive on $212 in welfare—which lets her rent a room in a house—and $103 in food stamps. Collecting cans and bottles from trash bins brings in $15 more, which buys some food for the end of the month.

* * * * *

Two years ago, at 69, Mae took in a 2-day-old crack baby for a year. She has had 10 foster children over the years, and also has taken in 10 other neighborhood children off and on, occasionally sleeping on the living room window seat to accommodate them.

Sometimes, the tough grandmother feels fear on her food runs. Once, she had driven her truck Downtown to Skid Row, parked and begun laying out pans of homemade rice, chicken wings, cheese toast and cobbler. Chris and Cee were at her side, wrapping forks and spoons in napkins. A group of homeless men gathered around her menacingly. Mae quickly solicited one of the ragged men to help her. "You can come here anytime." he said, staring down the others. "I guarantee no one will take advantage of you and your children." She fed 200 that day.

Mae's neighborhood is rough, too. In recent years, two neighbors' sons—neither one in gangs—were killed in drive-bys, shot through the back and neck. One an 18-year-old boy, was buried in a grave site Mae had purchased for herself The Menlo Avenue School one block from her home has a "gunfire evacuation plan." Its schoolyard has been sprayed with bullets 10 times in the past year and a half, once just as kindergarten was letting out, says Principal Arthur W. Chandler. Police helicopters often hover overhead, tracking clashes among the 18th Street Gang, the Rolling 40 Crips and increasingly violent tagging groups such as the Dirty Old Men.

Poverty is another mounting concern. Part of Mae's route traverses an area of South-Central in which more than one in four residents didn't have the resources to feed themselves the entire month, according to a UCLA study.

Since the 1980s, as a growing tide of poverty has left more people hungry, the efforts of nonprofit groups and individuals have become increasingly critical in curbing hunger's toll. "The government cannot do it all. If it weren't for the private sector, the tragedy would be, I think, unbelievable," says Roy B. McKeown, president of World Opportunities. Requests from people like Mae, he says, have become more urgent in recent years as joblessness in the inner cities has skyrocketed.

Mae's drive through this hungry landscape often includes a stop at her neighborhood Unocal gas station. "C'mon baby," she beckons to a man furiously washing windshields one recent day. Word spreads like wildfire down the street. Soon, the truck is surrounded by homeless women and men, many of whom have known Mae for years. She plucks oranges, apples and bread from boxes around the rim of the truck.

One bag goes to Tyrone Richardson, a 32-year-old unemployed construction worker. Taking the food, he fishes a wadded-up dollar bill from his pants. He stuffs it into Mae's shirt pocket. "This will help you get gas to help others. Sometimes I don't have a dime. Today I do." he says. The gift amounts to half of his total assets. Mae vehemently refuses the money. But, cradling a watermelon in his arm, he walks away, saying only, "She got a good heart."

"This is what we do," Mae says simply, stuffing more plastic bags with food.

"What's the problem? Tell me?" Mae quietly asks Sheree Wilson, 31, who has been homeless for three months and was headed to Jack-in-the-Box to eat a free packet of jelly when she noticed Mae's truck.

"This is my baby," the woman says, pulling from her jacket a crumpled photograph of her 1-year-old boy, Joshua, beaming from his crib. She stops peeling her orange and begins to sob, explaining that she left the baby with her mother because she is addicted to crack and "going crazy."

She says her best friend, who was on the streets with her, was recently arrested for prostitution and drug dealing. Now that she's alone, the streets are wildly dangerous. She's not sure how to get out, or if she has the will to leave crack behind.

Mae pulls out a small coin purse, counts out four quarters. Then, standing by her truck, Mae lays her hand on the woman's chest and leads her in prayer. "You are gonna be all right. Nothing is too hard," she urges.

"I have faith." Sheree says, lovingly fingering the picture of her son. "I just went the other way."

Mae pulls out of the station, leaving behind a destitute crowd on the blacktop, all of them munching apples.

It's not long before Mae happens upon Rosa Ramirez, 20, with her two children. Marbella Heredia, 1, and Jose Heredia, 2. Her husband, she explains, gets sporadic work in the garment industry. Now things are slow and he brings home as little as $50 a week. Marbella virtually inhales an orange she grasps in her tiny right hand. The juice cascades down her chin, trickling onto her white sweater. "I try to feed them something every day. Sometimes, it's just rice and beans," she says.

Mae prepares to leave, but Jose's brown eyes look pleadingly at her as he stuffs the orange into his mouth. "More?" he asks.

Mae's last stop of the day is Tarlee McCrady's house on Raymond Avenue. Mae peers inside the two-story house from her truck and, seeing no sign of life, drives on. But a loud pleading wail comes from behind the front door: "I'm here! I'm here!"

Mae parks in the shade. "You want a pumpkin?" she asks. The woman, who has sweptback gray hair, runs out and nods.

A 65-year-old living on Social Security, she met Mae in church nearly two decades ago. When her body is up to it, she goes out on the truck with Mae, helping distribute food. Today, she says, she is fretting over how to pay her water bill. She, too, gets much of her sustenance from Mae.

If not for the help, she says, "I'd be down on Skid Row. What else would I do?"

"She doesn't do a lot of talking. But she does a whole lot of doing," says Brenda White, who works at Church of the Harvest, which Mae attends. She says she's seen Mae take a bed out of her house—even the food in her own refrigerator—and give it away. Brenda, who has two daughters, was divorced six years ago and had a breakdown, leaving her temporarily unable to work at her hair salon. She was too embarrassed to ask for help from relatives. Mae didn't need prodding. Every other week, she began to bring bags of food.

In addition to her Social Security, Mae receives a modest income from caring for her foster children. Everything that's left after paying bills—about $100 a month—is put in a coin purse and slowly given out to people in need. The only hand-out she's taken from the government is some cheese.

"People have millions of dollars, they die, and their children fuss over it. I give my surplus money for children," she says.

Mae, nearing exhaustion, steers her truck home.

Wheeling into her driveway, Mae still has a third of the food. "Hi, Mother Raines!" a little girl from next door cries, waving. Other neighbors drop by. "What kind of bread you need? Brown bread? White bread? Your grandma feel better today?" Mae asks Erick, 8. He nods. Mae knows that many neighbors skip some meals each day but are too embarrassed to ask for food. "I know which ones won't come out," she says. "Some people would rather die than ask for help." For these, she packs boxes, which Donell begins delivering on people's stoops.

"I work in the shadows of an inner city overrun by gangs and riotous living. But when I can ease someone's pain, or can encourage them, I feel good," Mae says. "If I never do anything for the community I live in, why am I here? I don't want to hear the baby next door cry from lack of milk or see a child walk by without shoes.

"It's not hopeless. Everyone isn't extending themselves."

On Thanksgiving Day, Mae says, she will bake 17 traditional dishes. In the morning, her natural and foster children will gather, and read prayers. "Thanksgiving is for my family," Mae says, closing her front gate as the last of the food is dispensed and dusk approaches. That said, Mae concedes that last year, she gathered her leftovers at the end of the day, some paper plates and plastic silverware and summoned her children to help. She went to the corner of her street and served food to the thankful until every crumb was gone.

EPILOGUE

Three weeks after this series ran, the West Covina Unified school board voted to institute a government-subsidized breakfast program at Edgewood Middle School and at seven of its elementary schools, thus assuring breakfast—and a chance to learn unimpeded by hunger—to thousands of children.

West Covina's move to join the program was part of a rush by 60 schools in California. Thirty-three of these schools were in Southern California. They were among a group of 193 Southland schools that the state says should offer breakfast because a high proportion of their students are low income, but did not do so for a variety of reasons.

The Times reported on these schools and their struggles over whether to serve breakfast in a follow up to the series on Dec. 12.

Back at Edgewood, donations poured in. More than $22,500 had been pledged or delivered by Dec. 13. A citizens group, formed spontaneously after the series to fight hunger in West Covina Unified schools, used the money to serve breakfast to children until the government-funded breakfast could begin.

West Covina residents were not the only ones moved to get involved. One donor offered a secondhand truck to Mae Raines, the food angel of 42nd street, to replace her old clunker. Several churches and temples read the story about "the Muffin Lady" during weekend services. At the Ahavat Zion Messianic Synagogue, 40 worshippers passed a plate and collected $307 for Raines. Then, they planned a food drive.

"It really made us look in the mirror and say: 'We aren't doing enough'," said Ron Bernard, synagogue board president.

Others pledged $12,000 to the Charity Dock, an innovative hunger program at the Los Angeles Wholesale Produce Market.

Hundreds of callers flooded the newspaper with offers of help for some of the people profiled in the series. Many called crying,

saying they wanted to know how they could help a food pantry, a food drive, or assist a family in need.

"My husband is ill on life support. And I'm crippled from arthritis." wrote Majorie B. Walker of Los Angeles in halting handwriting. "But never have we went without food." She sent $50 to one family profiled in the series.

"My wife and I found your article to be a rude awakening to a problem which we did not know existed." wrote Bob J. Ratledge of Palm Desert, who fired off a letter to the West Covina Unified school board urging that it adopt a breakfast program. Other letters to the board were more blunt, threatening a recall if action wasn't taken. Some who sent checks apologized that they couldn't afford to send more. Others said they sat their children down and read them the stories of hunger.

Lisa Drynan, who was profiled with her three young sons, received more than 200 calls from readers offering to help. She said the assistance promised to make this the best holiday season ever for her children.

The story also sparked calls from hungry people seeking food assistance. At the Southern California Interfaith Hunger Coalition, a stream of people called to ask how they could apply for food stamps. The Self-Help and Resource Exchange—a program that helps people pool their resources to buy wholesome food at half the retail cost—has also seen an uptick in activity.

And at the Los Angeles Regional Foodbank, which struggles to get a decent share of corporate salvage food products to feed the hungry, this series helped focus new attention nationwide on the difficulties private efforts are encountering in stemming hunger. Pointing to subsequent national TV news and magazine stories touching on the issue, executive director Doris Bloch said, "these stories have built a fire under people."

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

TAKING FOOD OUT OF THE MOUTHS OF CHILDREN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. VOLKMER] is recognized for 5 minutes.

Mr. VOLKMER. Mr. Speaker, we are now at day 65, if my math is right, of 100 days and we are now getting to see toward the final 35 days of that 100 days. And when we look at it we look to see that we are going to have severe reductions in food stamps, school lunches, nutrition aid, the Women, Infants and Children's Program, hearing assistance for the elderly, and all because we have to give a big tax cut for the wealthy. It is not going to deficit reduction, it is not going to balance the budget. It is going to go to the wealthy, and it is going to be coming up from the young kids down here that are hungry and need that nourishment.

When I look at the school lunch program, we contacted our State Department of Education, we contacted the Governor's office, we contacted some of our local school districts, and the analysis of that school lunch program is in. Members do not have to take my word for it. The Governor of Missouri, the school superintendent of Missouri, the experts who operate the school lunch program in Missouri all agree. The majority party, led by NEWT GINGRICH, is taking food out of the mouths of children by cutting the school lunch program. Even worse, the majority party at the same time is cutting the same children's food stamps. Poor children in this country not only will not get a hot meal in school, but when they get home there will be less food. In the morning when they wake up there will be less or no food, and when they go to school there will not be any breakfast program at the school for them.

How are they going to learn on empty stomachs, their stomachs growling and turning around and churning because they have not gotten the nutrition that they need?

The majority party, quite simply, does not care if poor children in this country eat or not.

Is the majority party taking this mean-spirited approach in order to reduce the deficit? Oh, no, Mr. Speaker, not to balance the budget, not to reduce the deficit, but to give a tax cut to the wealthy. How callous can you get, taking food from children to give fat cats more money?

□ 2110

Let us look at it. These young children out here, we have got a man and a wife working part-time, making a little over minimum wage. They are making about $20,000 a year, $19,000, $19,000 a year. They are scraping by. They have got two kids. They are eligible for food stamps. In some ways they are eligible for a reduced price for the school lunch.

But when they pass their bills on welfare reform, they call it, those folks are not going to get anything.

Well, they say, hey, we are going to give you a $500 per child tax cut. That is what we are going to do for you.

But for that couple, folks, and those children, that $500 is zip. It is nothing, because it is not a refundable tax cut. So they do not get a thing.

But what they are doing is, they are saying, those kids, you do not need any help, because your parents are making all of $20,000, you do not need any help.

You know what they say who really needs the money, folks? Who really needs that money? Well, under their tax bill, the man and wife who are making $200,000, $200,000, they are going to get, for those same two kids, they are going to get $1,000; $1,000 is what they are going to get. And they tell you those people making that $200,000 need it. They need it for their kids. But the one making $18,000, $19,000, they do not need anything, they need less. And that is what they are going to get from the majority party.

You know why they say that $200,000 couple needs that money, that $1,000 for their kids? They need it so they can be the leaders of this country, so they can go to Harvard and Yale and all those other places and they can sock the money away. So if you have ever seen Robin Hood in reverse, just watch the next 35 days, America.

FEDERAL FOOD ASSISTANCE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from North Carolina [Mrs. CLAYTON] is recognized for 5 minutes.

Mrs. CLAYTON. Mr. Speaker, from yesterday morning into the wee hours of this morning, for 15 hours, the Committee on Agriculture marked up title five of the Personal Responsibility Act. That bill, with great reductions and many restrictions on feeding hungry Americans, is now poised for consideration on the House floor. Leadership of the committee is to be commended for eliminating the mandate for block granting the Food Stamp Program.

A State option on block grants, however, remains in title five and will be an issue on the floor. Also, during mark up, the committee accepted my amendment, which requires persons 18 to 50 years old, those who must work for food stamps, to be paid at least the minimum wage for their labor. Without my amendment, the bill would have forced many food stamp recipients to work for less than $1 an hour. The Agriculture Committee was wise to support the amendment. But, with action by other committees, the block grant issue continues to loom large and will be hotly contested during floor consideration.

Mr. Speaker, I would urge our colleagues, as we consider the block grant issue, to recall their days in school. Recall the importance of a hearty breakfast and a healthy lunch. Recall the necessity of the mid-morning and mid-afternoon milk or snack break. Recall the sense of urgency each of you felt the first time you experienced the pangs of hunger. And, recall how the ache of not being fed in your stomachs prevented you from being fed in your minds. Mr. Speaker, this debate is not about party or politics or pocketbooks. This debate is about our young, and our old. This debate is about strong bodies and clear minds. This debate is about the future of this Nation. Understanding the future, however, sometimes lies in remembering the past. Recall the infant mortality rate in America before the WIC Program. That rate has been lowered by as much as 66 percent, in some cases. WIC works. Babies don't die today like they died in the past, because we invested in life. Recall the fact that since the Institution of

Nutrition Programs, the gap between the diets of low-income and other families has narrowed, significantly. Stunting has decreased by 65 percent. Anemia has dramatically improved. Low birthweights are down. Mr. Speaker, it is easy to forget. Members of Congress dine at some of the finest restaurants. Eating is taken for granted. Hunger is unknown. But, while it is easy to forget, it is dangerous to fail to remember. This Nation is strong because we care for our weak. Every citizen is important. All can make a contribution. But, none, who is hungry, can participate or contribute in any meaningful way. Even those incarcerated in our jails and prisons, throughout the United States, are assured of three square meals a day. Surely, our children and seniors should get nothing less.

Mr. Speaker, I have been increasingly concerned about how rapidly we are making major and dramatic changes to the way our Government functions, indeed, many of our colleagues have commented on the pace of this Congress. It seems that we are emphasizing quantity at the expense of quality, and, more importantly, at the expense of the American people. The U.S. Constitution has been amended just 27 times in more than 200 years, yet this Congress has proposed several new amendments in less than 50 days. Moreover, in the space of fewer than 3 months, we have proposed a balanced budget amendment, passed unfunded mandates legislation, proposed a Presidential line-item veto, rewritten last year's crime bill, passed a plethora of regulatory reform measures, acted on defense spending and national security matters in a couple of days, considered term limits, welfare reform and rescissions, and we are now in the midst of tort reform. In our rush to meet an artificial, 100-day goal, it is a fair question to ask, are we hurting more than we are helping? Consider an article which appeared in today's New York Times. When the Personal Responsibility Act was marked up by the Committee on Economic and Educational Opportunities, the language passed resulted in 57,000 children of military families being denied access to the State feeding programs that would be established. To restore this feeding program for the military, it will cost the Pentagon more than $5 million for meals and another $5 million for administrative costs. It seems, Mr. Speaker, that we profess to want a strong military, yet we pass legislation that will cause military children to go hungry. These actions are either mean spirited or grossly negligent. Either way, America suffers.

I urge my colleagues to stand up against nutrition program block grants. Let us demonstrate that a wise and thankful Nation really does remember.

WELFARE REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. TALENT] is recognized for 5 minutes.

Mr. TALENT. Mr. Speaker, on March 21, the House will take up comprehensive, real and historic welfare reform. The object of that bill will be an historic and fundamental change in the direction of our welfare policy, away from a failed system that is destroying the poor and towards a system of relief and a system of relief and assistance that is based on marriage, on family, on work and on personal responsibility.

Mr. Speaker, how is the welfare system hurting the poor? First and foremost, it is destroying their families. Let us take a look at this graph here on my left.

In 1965, Mr. Speaker, one out of 15 children in the United States, about 6 percent, were born out of wedlock. Federal and State welfare spending at that time was about 30 billion. Today the out-of-wedlock birth rate is one out of three. It has increased by six times since 1965. The welfare spending has gone up 10 times to about $300 billion a year.

Welfare spending has not brought us a decrease in poverty, as I will show in a minute. It has caused an explosion in illegitimacies. The best social studies also agree. A controlled study in New Jersey showed that a small restriction in the growth of welfare benefits caused a 30 percent reduction in illegitimacy. And June O'Neill, who is the current head of the Congressional Budget Office, conducted a study showing that a 50 percent increase in AFDC and food stamps led to a 43 percent increase in the out-of-wedlock birth rate.

President Clinton has said there is no question that if we reduced Aid to Families with Dependent Children, and I am sure he meant substituting that with a different form of assistance for the poor, it would be some incentive for people not to have dependent children out of wedlock.

So history, social science, the President and common sense all agree: the welfare system as it is currently structured with its current incentives destroys families. It promotes illegitimacy by promising young men and women a measure of security and independence through a welfare package, but if and only if they have a child without being married, without having a work skill and earlier than they otherwise would. That means that the existing welfare system causes poverty, because, Mr. Speaker, work and marriage are essential to eliminating poverty. The best antipoverty programs are family and work.

I invite the House to look at the next graph. The red line in that graph shows the poverty rate in the postwar era. It has declined steadily all throughout that era until about 1965, when it reached approximately 15 percent.

The blue shaded area on the graph shows State and Federal spending on welfare since 1948. As the graph shows, that welfare spending held basically steady until about 1965, when the Great Society programs were started. At that time it exploded and increased by a factor of 10 times to about $300 billion.

At the same time as we were increasing welfare spending by a factor of 10 times, the poverty rate actually increased slightly. It was a little under 15 percent in 1965, and now it is a little bit over 15 percent.

In the last generation, the Federal Government has transferred trillions of dollars to the poor. But the welfare system at the same time has destroyed their families and, therefore, their incentives to seek the American dream for themselves and their children.

□ 2120

It is as if you are bailing out a boat with one hand while you were pouring water into the boat with the other.

Mr. Speaker, as we proceed through this debate on welfare we should remember two principles. The debate over welfare should not be about blaming the poor. It is the Federal Government that has perversely given material assistance to the poor on the conditions that they accept the kind of innervating spiritual poverty. We should not reform this system because people on welfare are abusing it, although that does happen. We should reform the welfare system because the system has been abusing people on welfare.

The second principle is this: Welfare reform shouldn't mean abandoning the poor. America must stand or fall together as a people with common ideals and aspirations. Welfare reform should mean bringing back the welfare system to reliance on those ideals.

My friend, the distinguished freshman from Oklahoma [Mr. WATTS] put it this way. He says that for the past 30 years the Federal Government has measured the success of welfare by how many people we could get on AFDC and food stamps and medicaid.

We need to measure success by a different index. Real welfare reform means measuring success this way by how many people we can get off of AFDC, food stamps and medicaid and into a life of dignity and hope. That is what the fight for welfare reform over the coming weeks in this House should be about. It is a fight that we can and must and will win for all of the American people.

ISSUES IN AMERICAN POLITICS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont [Mr. SANDERS] is recognized for 5 minutes.

Mr. SANDERS. Mr. Speaker, let me just touch upon a few issues that are very rarely talked about in this Congress. We do a lot of talking about a lot

of things but I am always amazed that sometimes the very most important issues that face the American people, the dynamics of our Nation seem to be ignored here in the Congress. So let me just touch upon a few points that I consider to be quite important.

Number one, if we are to understand the dynamics of American politics, it might be appropriate to understand that in the U.S. Congress today approximately 20 percent of the Members of Congress themselves are millionaires. And everything being equal, until we get campaign finance reform, we can only expect that number to increase.

A democracy is supposed to mean that ordinary people can run for office, ordinary people can get elected to represent their neighbors back home. Clearly, there is something wrong in this country today when at a time that perhaps one-half of 1 percent of our people are millionaires, 20 percent of the Members of the House and Senate of millionaires.

We recently had a gentleman in California who took out his checkbook wrote himself a check for $25 million in attempting to buy the Senate seat in that State, and that is happening increasingly. So if we want to understand why the policies of the U.S. Congress so often work to reflect the interest of the wealthy and the powerful, it has something to do with who is in Congress and who funds people who go to Congress.

Many of you may have seen in the papers that last month the Republican Party held a fundraiser. It was a nice little fundraiser. It was only $1,000 a plate. It was a good dinner. Nice dessert. It was a good bargain. The point is that the Republican Party on that night left with $11 million.

Now, why do people go to a dinner at a $1,000 a plate? The food is good, that is true, but there are other reasons and the reasons might be that they are not donating, they are investing.

Now, as the only Independent in Congress I would point out the Democrats are not far behind. They also have dinners of that kind. Wealthy people invest so that when this session, this Congress comes together, they vote tax breaks for the wealthiest people. They vote for trade policies which help large corporations export our jobs to Third World countries. That is a very, very serious problem. We desperately need campaign finance reform so that we can limit the amount of money that can be spent on a campaign and that we can really have democracy in this institution.

Number two, another issue that we don't often talk about is the very, very unfair distribution of wealth in America. Very rarely is that talked about. It is important to point out that in the United States today the wealthiest 1 percent of the population owns more wealth, not that bottom 90 percent. We have a situation now where the chief executive officers of the largest corporations in America are earning 150 times what their workers are earning.

Now, nobody thinks that everybody in America should all earn the same amount of money, but clearly there is something very wrong when so few people have so much money, while at the same time, the middle class is shrinking and at the same time poverty in America is growing.

While the richest 1 percent of the population own 37 percent of the wealth in America, we have 18 percent of our workers, people who are working full time, they are earning poverty wages.

We have 22 percent of our children living in poverty. That is the highest rate of childhood poverty in the industrialized world by far. That is double the rate of any other country. And we have at a time that some of our friends are proposing to cut back on WIC and to cut back on food stamps, we have 5 million children in America who are hungry today.

Let's talk about that issue. Tax breaks for the rich increased hunger for children at a time when we have the highest rate of childhood poverty in the industrialized world.

Let me talk about another issue. Our Republican friends talk about the mandate they received on November 8. Let me say a word about that mandate.

What percentage of the people came out to vote in that mandate? Thirty-nine percent of the people came out to vote. Republicans ended up with a smaller percentage, a little bit larger percentage than the Democrats did. Thirty-nine percent of the people came out to vote.

I am happy to say that in my home city of Burlington, VT on election day just this last Tuesday a progressive was elected mayor. We had 50 percent of the people coming out in a local election.

Why is it that so few people participate in the Democratic process in America? Why is it that poor people in America virtually don't vote at all, many working people don't vote at all? And I think the reason is that the people are basically giving up on the political system.

WELFARE REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Nevada [Mr. ENSIGN] is recognized for 5 minutes.

Mr. ENSIGN. Mr. Speaker, since Lyndon Johnson first launched the Great Society programs of the 1960s this country has now spent over $5 trillion to defeat poverty, a war that we have since lost and lost miserably.

You know, some people around here try to define compassion as how much money we can give to people and how many people we can put on welfare and how many people we can make dependent on a system that has failed that has destroyed the family. That has had crime rate skyrocket over the last 30 years, that has seen out-of-wedlock birth and we need to abandon that system and start over.

Incremental welfare reform will not work. President Clinton said it is time to honor and reward people who work hard and play by the rules. The administration knows that our welfare system is broken.

The people who defend our current welfare system want to keep people, or at least they seem to at least want to keep people in poverty. That can be the only justification for defending the current welfare system.

We are here and we were sent here to revolutionize the welfare system. It does not work. Government cannot be compassionate by definition because the word compassion means "to suffer with." Only individuals can suffer with other individuals, to offer them a hand up instead of a handout.

Our welfare system was intended to be a safety net in between work. If you happened to get in trouble, there was a safety net. What was intended to be a safety net has now become a hammock that, in time, becomes like a spider web that just entraps people and they cannot get out of it.

When I was campaigning, I would go through and meet different people, and I have a brochure and one of the things in the brochure talked about mandatory work for welfare recipients. Single mothers that I met with, that was the thing that they picked up on almost immediately every time that I met them. Mandatory work for people that are out there struggling, and they know that their tax dollars are going to pay for somebody that could be working, but is not. That is the hallmark of our welfare plan that will be voted on later this month.

You know, our country is a great country. And we have been known to be an opportunity society that has attracted people from around the world. But to continue to keep people in poverty is wrong. It is morally wrong.

This is not a question of economics; this is a question of morality. It is morally wrong to keep people in poverty by making them dependent on a system that they just don't see any way that they can get out of.

I believe that our country needs to become that opportunity society once again. We need to encourage small businesses and jobs, encourage entrepreneurs that are going to get out there and create opportunities for minorities and women and all people. We need to look for economic principles that don't benefit the rich, that don't benefit the middle class or the poor, they benefit all classes of people,

young and old, black and white, Hispanic. It does not matter.

We need to have principles that look for situations where all classes of people win. Instead of saying it is the Republicans or the Democrats, we need to put partisanship aside. I have only been here a short time and the partisanship of this place is sickening on committees and on the House floor. We need to put that aside and work for the American people. We were all sent here to solve the problems that a lot of this government has created. We were sent here to solve those problems, and we need to get down to doing the business that the American people sent us here to do.

In conclusion, let me say that I am proud to represent the people of Nevada. They are hard-working people with the work ethic, I think, that is known throughout the West. And because of that work ethic, they sent me here to get people off of welfare and into work.

CHILD SUPPORT ENFORCEMENT AND COLLECTION SYSTEM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland [Mr. HOYER] is recognized for 5 minutes.

Mr. HOYER. Mr. Speaker, one of the most critical areas in need of reform is our child support enforcement and collection system. Too many absent parents are not meeting their responsibility of emotionally and financially supporting their children.

Bringing children into this world and not supporting them is an irresponsible act and it is wrong. The time has come for us to put an end to this irresponsible behavior.

Those of us who work hard and play by the rules can no longer continue supporting a system in which responsibility is abandoned. Enough is enough.

Americans expect and we need to demand that both parents support their children. We must discourage government dependence and expect every able-bodied American to be personally responsible for their actions. The previous speaker talked about that. This is not a partisan issue. This is a critical issue if America is going to succeed to build a better society for our children and generations to come.

Payment of child support should be as certain as taxes and death. Each year failure to collect child support costs our country billions of dollars and children billions of dollars.

The potential for our child support collection is estimated at around $48 billion. However, only $14 billion is actually collected. This leaves an estimated collection gap of $34 billion per year that parents are not paying to support their children and expecting the rest of us to pick up the slack.

Clearly, we need to take care of those children. But we also need to demand that parents are there first.

Moreover, half of the women eligible for child support are receiving nothing. These statistics send a clear signal that we have got a lot more work to do.

Last week President Clinton moved us another step forward in our continuing effort to improve our Nation's child support enforcement system. I want to commend him on taking such a bold step in issuing an Executive order which will improve and expedite child support enforcement for Federal employees.

The Executive order will cross-match the names of Federal employees with Federal employment records and inform the States if there is a match. A determination will be made by the State as to whether wage withholding or other actions are necessary. The order will simplify service of process for Federal employees.

In addition, it will require every Federal agency to cooperate with the Federal parent locator service. The Executive order also cuts the time in half between the day a paycheck is garnished and the day it is received by the custodial parent.

Now, almost every Member of this body knows and my constituents know that I am a strong supporter of Federal employees and fight for their pay and benefits. But they, like others, need to be responsible. And they need to support their children.

The President has established a working model upon which the Congress can build. In the next couple of weeks I hope this House will bring a bill to the floor which contains meaningful reform to the current system.

The previous speaker talked about welfare reform and a couple of others did as well. There is not a person in this body that does not know that welfare is broke. And the issue is, how do we fix it? How do we fix it, and, yes, expect and demand work, but also understand that to get to work, we are going to have to take actions to facilitate that transfer from dependency to independence.

Before we reach the floor for the final vote, there is still ground which can be covered such as revocation of driver's licenses for persons owing child support arrearages. While I applaud my colleagues for including child support in their welfare reform package, I am disappointed that they chose to not include this provision. The inclusion of such a provision would have the effect of again holding parents responsible for support of their children.

The State of Maine has instituted such a plan. Since implementation, the State has revoked less than 20 licenses, but because of the threat of license revocation, the State has received about 12 million additional dollars for back child support.

Just imagine how much could be collected and used to support our Nation's children if this were implemented in all 50 states.

Mr. Speaker, we all agree the child support system is in need of reform. Let us take actions in the coming weeks to make sure that children receive the support from their parents that they are due morally and legally.

PUNITIVE DAMAGES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee [Mr. BRYANT] is recognized for 5 minutes.

Mr. BRYANT of Tennessee. Mr. Speaker, punitive damages have clearly gotten out of hand. Tonight, I want to share with you a case involving punitive damages in my home State of Tennessee.

Sadly, it involved the death of an individual from Alabama by carbon monoxide poisoning.

The plaintiff claimed that the carbon monoxide poisoning was caused by a natural gas water heater made in Tennessee. It was a used heater obtained by a homeowner and installed by someone with no plumbing background. It was installed behind a wall without combustion air, with no vent, and was connected to an LP gas line. The local gas company wasn't notified, and that was a violation of local law.

In short, the heater was altered from its original manufactured condition and was installed improperly and illegally. Nevertheless, a jury verdict was rendered against State industries. The jury awarded $5.5 million in compensatory damages and $6.5 million in punitive damages. In fact, one of the jurors wanted to give $25 million.

On appeal, the Alabama Supreme Court reduced the compensatory damages to $850,000, but the punitive damages stood.

Now I am not criticizing in any way, shape, or form the person who installed the heater. In his mind's eye, he was lending a helping hand. And I am truly sorry for the death of anyone. But what I am criticizing is the award the jury made.

Punitive damages are intended to punish—not to redistribute wealth. Compensatory damages are designed to compensate for medical costs, lost wages, pain and suffering, and emotional distress. Punitive damages are intended to punish—to send a message that whatever was done wrong, don't do it again.

Had the legislation before us tonight been in place, the plaintiff still could have received almost $3.5 million. That's a substantial amount of money which would have served to both compensate the plaintiff for their suffering and punish the defendant for whatever wrong they may have done.

This legislation will not impede upon anyone's right to sue, despite the many

fallacious and misleading charges by its opponents.

I would support no legislation that would close the courthouse doors to anyone. Access to the courts is a fundamental right that must be acknowledged. But as a lawyer, I can tell you we must have tort reform, and we must have it now.

It's time we establish common sense and reason in our judicial system, and this legislation does just that. Many States have already placed caps on punitive damage awards.

It's time the Federal Government followed their lead, and passed tort reform legislation.

A CHALLENGE TO THE DEMOCRATIC PARTY: GIVE US YOUR SPENDING CUTS

The SPEAKER pro tempore (Mr. LONGLEY). Under a previous order of the House, the gentleman from Georgia [Mr. KINGSTON] is recognized for 5 minutes.

□ 2145

Mr. KINGSTON. Mr. Speaker, the balanced budget amendment is not truly dead, but it is in the hospice care unit across the hall. In the House about 130 Democrats voted against it, 2 Republicans. In the Senate, 33 Democrats and 1 Republican voted against it, so apparently, I know the Democrats had some heartburn with the concept of a balanced budget amendment.

One of the big reasons that they gave, particularly in the Senate, was monkeying with the Constitution. Apparently, not monkeying with the Constitution is more important than not letting the country go bankrupt. Obviously, interpretation of the Constitution and its sacredness is relative to proximity to reelection.

I would say that so many times, if you watch the Senators speaking, they flip-flop back and forth more than an old Patsy Cline record on the jukebox.

First, they said, the Constitution: "I'm not going to vote for a balanced budget amendment because of the Constitution." Then, they said "Give us your specifics, Republicans. You want to balance the budget by the year 2002, give us the specifics."

Last week, the Committee on Appropriations gave $17 billion in specific cuts, very difficult cuts, heart-wrenching in many cases, painful, many times politically risky, politically unwise. Members had programs in their own districts that were reduced, at a time when there is a lot of screaming and crying back home to keep these programs.

What the Republican Party has had to do is say "Look, we are on a sinking boat. We are asking everybody to throw out a little bit of your own luggage, but we think if you do that, we can get the boat ashore. We can guarantee you if you won't let go of your luggage, we are going down."

At a $4.5 trillion debt, and an item on our budget called interest on the national debt, which is the third largest expenditure in the national budget, $20 billion a month, we are going bankrupt.

Yet, Mr. Chairman, we hear time and time again, as we did earlier tonight from the gentleman from Missouri, "We are not doing things for the children." Back home, Mr. Speaker, it reminds me of when I was a kid. My daddy had a charge account at a pharmacy.

I found out when I was about 10 years old I could go down there and get myself a 25-cent Coke and charge it to my dad, just write his signature, and I didn't have to reach in old Jack's pocket, because I just had to sign my dad's name.

Then at the end of the month my dad would see a 25-cent charge for Coca-Colas and he would have some stern words for me, but he would also get his 25 cents back.

We have got an opposite case going on in the U.S. Congress, particularly on the Democrat side, particularly on those who will not give it a rest on the school lunch program. They would prefer misinterpretation of reality to reality.

Mr. Speaker, what they are saying is "Go ahead and charge it, not to your dad, charge it to your son and your grandson and your daughter and your granddaughter. Years from now, when your children's children come to pay the bill, you will be dead and you will not have to worry about their debt."

That is what we are doing. We talk about doing things for children. How about not saddling them when they get out of school, when they get out into the work world, how about not saddling them right off the bat with a huge, tremendous debt? That is what we are doing.

It is kind of like saying, you know, people want ice cream for today. It might not be in their best interests to eat ice cream three meals a day. Let us kind of cut back a little bit, and maybe there will be enough tomorrow, but we have to take some meat and vegetables now. It is very important to do it.

We had $17 billion in specific cuts. To my knowledge, not one Democrat voted for any of them. They grandstanded about how harsh all of them were. I understand that, that is fair game. I would say the Republican Party has done it to the Democrats many times themselves.

However, the fact is we are taking away one of their arguments for voting against the balanced budget amendment, Mr. Speaker. We are giving specific cuts.

Now, in the spirit of good sportsmanship, in the spirit of preservation of America, in the spirit of the best interests of the taxpayers, I challenge the Democrat party, give us your cuts. You do not like ours. That does not change the fact that we have a $4.5 trillion debt. That does not change the fact that we are paying $20 billion a month in interest. That does not change the fact that the third largest expenditure on our national budget each year is interest. So give us your specifics. We need to hear from you.

I think if the Democrat Party would go ahead and decide to jump in the water with us, that maybe we could take the best of their ideas with the best of the Republican ideas and do what is best for the United States of America, so that our children and our children's children will not be saddled with such a huge and tremendous debt and a bankrupt nation.

THE TRUE REPUBLICAN PROPOSALS FOR SPENDING ON THE SCHOOL LUNCH PROGRAM AND ON WIC

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona [Mr. HAYWORTH] is recognized for 5 minutes.

Mr. HAYWORTH. Mr. Speaker, I would associate myself fully with the remarks made by my good friend, the gentleman from Georgia [Mr. KINGSTON], and for that matter, I listened with great interest to my good friend, the gentleman from Maryland on the other side of the aisle in his call, in his plea for bipartisanship, echoing our good friend and fellow newcomer from Nevada, [Mr. ENSIGN].

I would implore Members on both sides of the aisle, and indeed, people across this Nation, who have watched with interest, Mr. Speaker, as we have been involved, setting an historic pace for legislation, fulfilling a Contract With America, working to establish a new partnership together, knowing what is at stake, to truly understand the terms of this debate.

It has happened again, and doubtless will happen yet still, when those who fail to answer the challenge and call of my friend, the gentleman from Georgia [Mr. KINGSTON], proffer not new ideas, but, instead, inflammatory rhetoric, and inaccurate rhetoric.

For that purpose, once again tonight, I feel it is important as part of the truth squad to share with the American people, Mr. Speaker, the true proposals on spending for the School Lunch Program and for the program we called WIC, Women, Infants, and Children.

We start here in 1995 with an expenditure for WIC of almost $3.5 billion. We start with a school lunch expenditure in 1995, for the fiscal year, of $4.5 billion. Note in the succeeding years, the totals always go up. In 1996 for WIC, $3.6 billion. For the School Lunch Program, it is $4.7 billion. Look down to

the year 2000. For the WIC Program, there is an increase of almost, or really in excess, of one-half billion dollars, up to $4.2 billion, and an increase in the School Lunch Program, an increase in the School Lunch Program of $1.5—pardon me, $1.1 billion, all the way up to $5.6 billion. Mr. Speaker, how on earth can that be characterized as a cut?

Now, the unkindest cut of all is the broad swath of truth that is shunted aside for purposes of political theatrics, for purposes of partisan advantage, for purposes of inflammatory rhetoric. The numbers speak for themselves.

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

Mr. HAYWORTH. I am glad to yield to the gentleman from Georgia.

Mr. KINGSTON. Mr. Speaker, I am disturbed about that. Somebody is lying. Are you lying, or is the gentleman from Georgia lying? If the taxpayers of America want to have those numbers, will you be willing to send them to them? Are you going to stand behind them?

Mr. HAYWORTH. Mr. Speaker, I am very happy to send these numbers. I believe everyone in the new majority is happy to share these numbers as part of the new proposals. Will there be different delivery systems? Sure.

Mr. KINGSTON. If the gentleman will yield, let's do this. Let's say if you are represented by a Democrat, write and get a copy of these. Send them to your representative and ask him why those numbers are not the truth.

If you are a Republican, we are going to send them to you. Let us just talk to the Democrat district tonight: Write and ask for those numbers.

Mr. HAYWORTH. Reclaiming my time from the gentleman, Mr. Speaker, I think he makes an excellent point. As we engage in this debate, in this new partnership, the American people really should write, write any of us, Members of the House, and ask for these numbers; specifically, the GOP proposed spending on WIC and School Lunch Programs.

We will be happy to supply those numbers, and challenge our friends on the other side to talk about this term "cuts," because again, there are no cuts. In the popular imagination, the only "cuts" are decreases in future increases in expenditures. Again, only in this culture, only in this curious combination and curious advantage-taking of political opportunism can that term even be bandied about.

I guarantee, I say to the gentleman from Georgia, and Mr. Speaker, the families gathered around the kitchen table making hard decisions about the family budget deal with real cuts, not phantom cuts and not theatrics.

I noted with interest my good friend, the gentleman from Missouri, who really started the special orders tonight, I think his information was inaccurate. This is the real story.

THE RESCISSION PACKAGE OF THE REPUBLICAN MAJORITY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from California [Mr. BECERRA] is recognized for 60 minutes as the designee of the minority leader.

Mr. BECERRA. Mr. Speaker, I appreciate the opportunity to come tonight and speak to my colleagues about something that will be coming before us next week. That is the Republican majority's rescission package, which, in essence, is the cuts that were made in the Committee on Appropriations in the last week or two to the tune of about $18 billion, cuts that are going to be used, we first were told, for purposes of trying to finance the disaster relief efforts in places like California, as a result of the Northridge earthquake; in places like Florida, that still have some final tasks to be done to take care of the hurricane disasters they suffered from; northern California, earthquake; the Midwest, floods; a number of different disasters that this country has experienced over the last couple of years.

Unfortunately, if you take a closer look at this rescission package, you see something very, very disturbing. I would like to go into that a bit.

Again, the rescission package, what it really means in plain English is that we have wiped out funding for certain programs which have already been approved for such funding. In other words, Mr. Chairman, last year's budget, which may have allocated $1 for a program, this past week the Committee on Appropriations went in and decided to make cuts in particular programs under which it has discretion to do so.

It cannot touch things like Medicare, Medicaid, Social Security, because those are entitlement programs, and they are not discretionary. The discretionary programs include things like the Department of Defense, Department of Education, job training, veterans' benefits, and so forth.

If you are concerned about the quality of public education in this country, teen drug use, the increasing potential of today's youth being involved in gang violence, in crime, if you are concerned about veterans, if you are concerned about housing for seniors that are on a limited budget, then you have good reason to be very concerned, if not outraged, about what the majority party has done with regard to this rescission package.

The majority party's main target, as it turns out, happens to be kids and senior citizens. The GOP's main beneficiaries in this rescission package happen to be the very wealthy. Let us take a look at a few things done through this rescission package.

I have put together a chart here to give us an idea of what happened with all the cuts that came out of the Committee on Appropriations recently. Who takes the hit? Of all the cuts, the close to $18 billion in cuts, 63 percent of those cuts will hit low-income individuals. Close to two-thirds of all the moneys cut come from programs that help veterans who are low-income, the elderly who are low-income, children, $17 billion. It will be interesting, because we will talk about where that money goes, and it is going to be interesting to find out why we had to cut $17.5 or so billion.

Mr. Speaker, let me focus a little bit more on where those cuts are that we see here listed as having hit mostly the low income. Where did the money come from? For the most part you can see the biggest hit was taken by housing, housing for seniors, housing for low-income individuals, housing to help supplement those who are having a tough time making a living, that are working poor; job training, job experience. Of all the cuts 14 percent come from job training programs to help young people and those who are trying to get off of welfare, and those who are trying to get back on a job because the recession has caused them to lose their job as a result of downsizing in areas like the aerospace industry.

□ 2200

Health care, health cuts, 10 percent. Education, 9 percent. Within the other 25 percent, I should mention that we list veterans benefits programs. Let me give some quick details on some of those areas in cuts.

Housing, $7.2 billion comes from housing; $2.7 billion comes in rental assistance for low-income families. That is about 62,000 vouchers down the drain, 62,000 families that will not be able to qualify for some assistance to try to make sure they are able to rent a place to stay; $186 million comes from housing for persons with AIDS. In Los Angeles, I can tell you that thousands of people with AIDS will now probably find as a result that they will be denied certain housing because that assistance that was being provided for this population of needy individuals is now being cut.

Job training cuts, $2.35 billion. Included in that is the complete elimination, not a cut, complete elimination of summer youth employment programs, $1.7 billion. That is money that has been used in a lot of different areas, including places like New York, in rural States, in places like Los Angeles, to try to help youth who otherwise might just hang around the street corner at night.

The impact on Los Angeles of that cut, well, we can expect about 23,000 kids to be denied job training and classroom instruction over the next year.

Impact nationwide, probably about 600,000 children, not children, young

adults, will be deprived of a chance to do some good work and learn something as they prepare themselves to become working adults.

Education, $1.7 billion in cuts. What do we do? Well, eliminate the drug-free schools program. That is a program to try to make sure kids don't start using drugs and as we know, most folks who are arrested these days, it is as a result of using drugs, selling drugs or somehow drugs are related. Yet we are eliminating the drug-free schools program that tries to keep drugs out of the school and tries to make sure kids don't start using or selling drugs.

What else? We eliminate also school construction programs. How many of our neighborhood schools need some type of refurbishing, how many of our neighborhoods just need schools? Well, we have eliminated a program for that. We have got massive reductions in grants to reform schools, so we finally get caught up in technology. We use money for homeless youth, to educate homeless youth, that is eliminated.

We have a cut in national service. That is the program that "Says young man, young woman, you are interested in going to college, you want to serve your community, we will give you a little money, pay you low wage, minimum wage, at the same time we'll also tell you that after a year you'll have a grant of about $4,700 that can be used for your education, only for your education. If you go on to college, we'll give you $4,700 to help offset some of the cost of that education." Huge cut in national service.

Health cuts, $10 million cut in the Healthy Start Program. That is a program to help working women, poor women who have very little access to health care. It provides them with prenatal care so that they can make sure that they do not end up costing the local government and the community and its taxpayers additional dollars because they end up having a child that is born with low birthweight or some abnormality and has to go to the approximate intensive care units and costs us 10 times as much as it would have cost to have given decent prenatal care.

A $25 million hit on the WIC Program, Women, Infants, and Children Program; 100,000 women and kids are going to probably be denied proper nutrition.

What else? Low-Income Home Energy Assistance Program. That is the program that helps low-income seniors, others who have a very difficult time during winter months in places where it is cold, to survive those chilling winter months. We are cutting $1.3 billion from that program.

Other cuts, I will mention veterans' benefits, take a hit of about $206 million. That is a real slap in the face of our veterans who certainly do not believe they get enough as it is in the types of programs available under the Veterans' Administration. Yet they are going to take another hit.

Corporation for Public Broadcasting, $47 million hit, a $94 million hit is projected for the next fiscal year. What we are doing with the Corporation for Public Broadcasting in Congress is the Republican majority is trying to get us to a glide path in about 3 or 4 years where we actually eliminate all funding for public broadcasting.

The EPA—That is the Environmental Protection Agency, lots of cleanups to do, all the toxic dumps we know that are in our communities. Well, $1.3 billion mostly for Clean Water Infrastructure Program is being gutted.

Where does all of this money go from this $17.5 billion or so bill that cuts from these programs? Let's take a look.

We were told first that since the President sent a bill over requesting that we provide some additional moneys to help provide for disaster relief, as I mentioned earlier, that was one of the reasons the Committee on Appropriations had to find some way to fund it. We have never done it before where in a disaster we have taken money from other programs to pay for a disaster, we have always said this is a disaster, we have to pull together as Americans and find a way to help people. But this time we did it differently. But not only did we do it differently, let's take a look at what happened.

The committee, the Republican majority, decided to give about $5.3 billion for disaster relief. Yet they cut about $17.5 billion in programs. So where did the other two-thirds of the money go if only $5.3 billion went to disaster relief?

Well, you see, the Republicans ran a campaign last year saying in their Contract on America that they were going to provide tax relief. The problem is the tax relief they are providing goes to the wealthy. So two-thirds of all the moneys cut, from veterans, from our schools, from programs that help children stay away from drugs and out of gangs and away from crime, from health care programs, from housing programs for seniors, for moneys that go to help AIDS victims, all of that is being packaged in the $17, $18 billion package. Less than one-third is going to go for actual disaster relief to help people who are still suffering from natural disasters, and two-thirds is going to go to tax cuts. I know I have a colleague who is going to join me in a few moments, I want to talk soon about what those tax cuts are going to do. But let me just make a couple of quick comments more.

Why tax cuts now? But more importantly, when we looked at the programs that were being cut, why did we not see anything that hit the military? Are we so convinced that there is no fat in the Department of Defense? Is this not the same department that gave us $500 toilet seats and that gave us billion dollar cost overruns on military projects in the last few years? But why is it that we do not see a single cut there? But more importantly, why is it that about 2 weeks ago, this same House with majority Republican support passed out a bill that increased spending for the military, including moneys for star wars? Increasing money for the military spending, giving tax cuts to the wealthy, paying for it through cuts to low income and middle income people. That is what we see.

If you do not believe it, let's take a look at one last chart.

That tax cut that is in that Contract on America, where does it go? Part of it is for a capital gains tax cut. It is important to understand that when you give a capital gains tax cut, that does not go to every American, and especially not to most working Americans who earn a wage. Most of that goes to people who are fairly wealthy, who have a lot of assets and who get to deduct some of the profits on those assets when they sell them. So much so that let's take a look at who benefits from that capital gains tax cut that the Republican majority is proposing in the House of Representatives. That tax cut, by the way, will cost over the next 10 years when it is implemented, should it ever get implemented, about $208 billion. That is $208 billion to our deficit over the next 10 years. Who gets the majority of the benefits of that? As you can see in this chart, and if it may be kind of small for people to see some of the type, this is broken down into different income levels.

Less than $10,000 incomes, well, you're going to get about half of a percent of the benefits. If you earn between $10,000 and $20,000, well, your benefits will be about 0.8 percent of the entire cut. Well, $20 to $30,000, you get about 1.7 percent. So all the families in America that earn $20,000 to $30,000 can expect to get as a group 1.7 percent of the tax cuts under the capital gains tax cut; $30,000 to $40,000 income range, you'll get, as a group, about 2.6 percent of all that; $40,000 to $50,000, you'll get about 3.2 percent of the benefits of that. If you make between $50,000 to $75,000, that whole group of Americans within the $50,000 to $75,000 income range will get about 9 percent of all the $208 billion in benefits. If you make between $75,000 and $100,000, you are going to get about 9.4 percent of that $208 billion in capital gains tax cut benefits. And If you happen to make more than $100,000, which represents about 9 percent of all taxes-filing, taxpaying Americans, you get about 72.6 percent of all the benefits. These are the folks that are going to make out like bandits from the capital gains tax cut. And who is getting cut to finance this capital gains tax cut? As I said in that rescission package, if only 5.3 billion is being used for disaster relief,

the other $12 billion or so, which is coming out of low-income and middle-income individuals, families and children and seniors, is being used to finance this.

Let me at this stage ask my colleague from Vermont to join me. I want to first thank him for taking the time at this late hour to come and chat with me a bit about this.

Maybe he has a few comments he would like to make as well about what I have just had a chance to discuss.

Mr. SANDERS. First I want to thank the gentleman from California for his wonderful presentation, because I think he hit the nail right on the head.

Essentially what we are talking about tonight are priorities. That is what a government does, like every family in America. It has to make choices as to how it allocates money and where it saves money.

What the gentleman said in terms of the rescission package is basically consistent with the whole thrust of the Contract With America. What that is about, as his charts have amply demonstrated, is that on one hand, despite all of the loud rhetoric about the terrible deficit and the $4.5 trillion national debt, the first point is our Republican friends are proposing massive tax breaks for the wealthiest people in America. Here we have a situation today where the gap between the rich and the poor in America has never been wider, the wealthiest 1 percent of the population own more wealth than the bottom 90 percent. We have a terrible deficit. All kinds of very serious social needs in America. And our Republican colleagues are proposing massive tax breaks for the wealthiest people in America.

Now, that may make sense to somebody, but not to the many people in the State of Vermont and around this country that I talk to who work for a living. That is point number one.

The second point that the gentleman from California made, which is also absolutely appropriate, is that today at a time when the cold war has finally ended, when the Soviet Union is no longer our enemy, Russia wants to join in NATO, many of the Communist bloc, former Communist bloc countries want to join in NATO, at a time when we have the ability to significantly lower military spending, to help us deal with the deficit, to help us pump money into all kinds of enormous needs that this country faces, our Republican friends, if you can believe it, and I know that many people may have a hard time actually believing it, are proposing tens of billions of dollars more for the star wars program.

So tax breaks for the rich, more money for star wars, and for other military programs.

If you are going to do those things, which will cost us tens of tens of billions of dollars and if you want to move toward a balanced budget in 7 years, something has got to give. That is the equation. Tax breaks for the rich, more money for star wars. Well, what has got to give?

And the gentleman from California mentioned a number of the areas that have been affected by rescissions, that is, cutbacks in money that has already been appropriated.

Let me reiterate some of them as they apply to the State of Vermont. I was particularly outraged that one of the areas where we saw the most savage cutbacks, $1.3 billion, was for the Low Income Heating Assistance Program, also referred to as LIHEAP. The LIHEAP program provides heating assistance to low-income people, many of them elderly people who live in cold climates. In my State of Vermont, the weather gets down to 20 below zero to 30 below zero. We have many elderly people who are living on very fixed incomes. These are people who often have to choose between heating their homes or buying the prescription drugs they need to ease their pain.

□ 2215

The LIHEAP program impacts upon 24,000 households in the State of Vermont. The Republican rescission package would cut back 100 percent, would eliminate the LIHEAP program.

One of two things will happen as a result. Either elderly people will go cold in Vermont and in Maine and throughout northern America, or they will take the little money they have to put into heating and not have the food that they need or the medicine that they need.

I do not know about other people's priorities, but it does not make a whole lot of sense to me to talk about spending billions of dollars more for Star Wars to cut taxes for the rich by tens of billions of dollars and then force tens and tens of thousands of elderly people in America to go cold in the wintertime.

Every politician who gets up here talks about the serious drug problems that we have. It is a problem in Vermont, it is a problem in California, it is a problem in Virginia, it is a problem all over America.

In my State of Vermont I was recently at a town meeting in Bennington and teachers there talked about how important the drug education money that comes into that community is in keeping kids away from drugs. Every sensible human being understands that an ounce of prevention is worth a lot more than spending billions of dollars throwing people into jail. People in Vermont and all over this country are working day and night to keep kids away from drugs, away from gangs.

This rescission program cuts back significantly on money that goes to help teachers and educators keep kids away from drugs. And on and on it goes, cutbacks for education, for people who are homeless.

I think what the rescission package talks about is the priorities that some of our Republican friends have, and I think that they are not the priorities that the ordinary American people have. And I hope that out of this discussion tonight people all over this country will stand up and say, now wait a second, that is not what the United States of America is supposed to be, it is not supposed to be making the elderly go cold in the wintertime, it is not supposed to be taking away educational opportunity from homeless people.

I would simply conclude my remarks by thanking the gentleman from California very much for this extremely important discussion.

Mr. BERCERRA. I thank the gentleman from Vermont [Mr. SANDERS] for participating and I hope he will have a chance to stay and we will have a chance to indulge in further colloquy.

I would like to recognize my other colleagues in a second. But I would like to make one quick point. The gentleman from Vermont left off on a very important note and I would like to follow up on that and return to this chart which shows where the money goes. As I said, only less than a third of the money is actually going to disaster relief. But let me talk a little bit about this disaster relief.

Something very interesting was done here. It was a play with hands, you know it is a shuffle game. Part of that money that was cut in that $17.5 billion in cuts included the following: $350 million of unused funds from the Federal Highway Administration. That is money that was allocated for the Federal Highway Administration to help in the earthquake relief efforts to get roads and bridges back up to working condition. It has not yet been expended because we have not finished the fiscal year.

So, what did the Republican majority do in the Committee on Appropriations? They cut that remaining $351 million, but interestingly enough we see we are getting $5.3 billion for disaster relief, so what they did was say we are taking $351 million, putting it in our pocket, pulling it out and saying now we are giving, about to give $5.3 billion for disaster relief. They do not tell you they really cut $351 million from disaster relief, they are just saying that they have made cuts and they are trying to say that they are mostly cuts in waste, fraud and abuse, but quite honestly we know it is much more than that.

It is really discouraging to see how this is being done.

Let me now take a moment to recognize a good friend and colleague from the State of Virginia [Mr. SCOTT], who is here I hope to join us and discuss some of these things as well.

Mr. SCOTT. I thank the gentleman. It is a pleasure to join him and the gentleman from Vermont and the gentleman from New Jersey to discuss these rescissions. As the gentleman has indicated, the rescissions are going to pay mostly tax cuts.

Comment was made earlier about school children and lunches and whether we are spending more money or less money. You can call it whatever you want, but if we adopt the Republican budget many school children who are eligible for school lunches today will not be eligible if that budget is adopted.

Mr. BECERRA. Mr. Speaker, if the gentleman will yield back the time for just a moment, we should give some detail because the gentleman who spoke earlier about this and said we are actually increasing the budgets over the next several years for those school, those child nutrition programs wants to leave the impression that actually we are giving more under this Republican proposal than was allocated under current law.

Mr. SCOTT. Well, no, it is not more than current law; it is less than current law.

If we continue going as we had planned, to cover the school children that need to be covered, more would be covered. They are going to cover less school children, and some eligible today will not be eligible with inflation; costs go up, more children show up in school, and if we continue at the rate they want to go, some children that are eligible today just simply will not be eligible if this budget is adopted, period.

Mr. BECERRA. So in other words, the Republican proposals do increase from this current fiscal year what will be allotted next year, but they do not cover the true costs because they do not take into account the growth in the number of kids in the schools or the inflation rate.

Mr. SCOTT. This is exactly right.

Mr. BECERRA. So the schools will have to do with a little bit more money, but with more kids and inflation on top of that.

Mr. SCOTT. And more costs and some children will not be able to get fed as a direct result of that budget.

Mr. Speaker, I would like to again thank the gentleman from California for having this special order. The 1995 rescissions touch many programs, but frankly the ones I want to talk about just very briefly are the targeted prevention-oriented programs.

I am particularly concerned about the mean-spirited cuts in the Safe and Drug Free Schools and Communities Program and the Summer Jobs Program. These programs will not just suffer a reduction in funds, but are at risk of being completely eliminated. The Drug Free Schools Program and the Summer Jobs Program are not frivolous programs, they are designed with specific intentions. Drug Free Schools was authorized as a means to repeal the onslaught of drugs and violence in the schools. The most significant changes in 1994 included an emphasis on violence prevention.

In the city of Richmond in my State of Virginia, we have a program called Richmond Youth Against Violence. Recognizing the overlap and risk factors for violence and substance abuse, the school system decided to focus on violence prevention as an effective means to reduce or eliminate drugs used by our young people.

Richmond Youth Against Violence is operating in all eight middle schools. It teaches mediation, how to avoid violence and the circumstances of violence and provides counseling for students suspended for violence. Funds from the Drug Free Schools and Communities Act provided the startup money for Richmond Youth Against Violence, and it works. Through various evaluations, research on this program has shown that boys in the program do not display an increase in violence, violent behavior and they are less likely to initiate substance abuse activities.

Mr. Speaker, the Summer Youth Program is another successful program. The GOP, however, has decided the program that gives over 1.2 million low-income youth their first opportunity at work and their first step toward learning work ethics has no place in the Republican Contract With America.

□ 2230

Summer youth jobs has a long history. It started in 1964 and has been enjoyed by youth in inner cities and rural areas. Kids 14 to 21 are eligible for the program and they flock to it. Last year there were two applicants for every job in the summer program.

For those who say that the program is ineffective, I say look at the research. The Department of Labor's inspector general says that the program is run very tightly and is well administered, and unlike the stereotypical welfare programs, the summer youth jobs program involves real jobs. It is not uncommon to see youth performing clerical work for city offices, supervising and tutoring children in daycare centers, serving as a nurse's assistant in a hospital.

Work and study done by Westat, Incorporated on the 1993 summer job program gave high marks for the program. The supervisors who were surveyed reported that there are no serious problems related to kid's behavior, attendance or turnover, and, Mr. Speaker, we know the importance about feeling good about your job and feeling that what you are doing is worthwhile. The young people in the summer youth jobs program feel the same way, they work hard and feel good about their summer jobs.

These two programs, like many others, like the education for homeless children and youth, the training for careers and early childhood development and training for careers, and counseling young children affected by violence, the literacy programs for prisoners, all have merit and need to be continued.

Some may oppose the short-term costs, but I remind them of the long-term risks. We cannot continue to undermine the programs which have been proven to deter violence and crime. We must also provide an environment for young people to gain the experience necessary for them to function as adults. Drug-free schools and communities program and the summer youth and jobs program accomplish these goals.

In conclusion, Mr. Speaker, the prevention programs work. We can pay for them now or we can pay a lot more for prisons later. We need to defeat these mean-spirited, short-sighted rescissions.

Mr. BECERRA. I want to thank the gentleman from Virginia for taking the time to come here and present a cappella testimony about why we should fear these cuts that are being proposed at this particular time.

Let me at this time recognize another distinguished colleague and friend, the gentleman from New Jersey [Mr. ANDREWS], and ask him if he has a few things would he like to say. And I thank my friend from California for giving me this time and organizing this discussion.

Mr. BECERRA in particular is to be commended for leading on this floor tonight a discussion of priorities in our country and where the taxpayer's money ought to go. Mr. Speaker, Mr. BECERRA deserves particular praise because this may be the only discussion we have an opportunity to have about priorities under the way this bill is going to be brought to the floor, and I want to speak for just a few minutes about what is wrong with that and how that cuts off a real debate about where the public's money ought to go and what the Federal Government's priorities ought to be.

Myself and Mr. SCOTT and Mr. SANDERS and Mr. BECERRA may have different priorities as to how this bill ought to come down. Frankly, I think it is an urgent priority to cut the size of the Federal budget and to make this government leaner and smaller and more efficient.

I think it is a demanding priority that we find a way to lessen the burden of taxes on the American people, and perhaps there would be some agreement or disagreement among the four of us as Democrats on that point. The point is, this is the place where we are supposed to thrash out those differences over priorities and have our say.

Mr. Speaker, as we all know, when a bill is brought to this floor, it is brought to the floor under something called a rule and the rule sets forth which amendments may be debated and voted upon and which amendments may not be debated and voted upon.

This afternoon, March 9, the chairman of the Rules Committee, the distinguished GERALD SOLOMON of the State of New York circulated a letter, which I will make part of the record at the appropriate time, which outlines his proposals to what the rules should be under which this bill is brought to the floor, in other words, the rules of debate, what we can vote on and what we can't vote on.

The rules of debate are totally closed, totally unfair, and will totally shut off the kind of priorities debate, Mr. Speaker, that Mr. BECERRA has launched tonight. Let me give you some examples.

The Republican bill that will be before us will cut a net $12 billion from this year's budget. Now, one could take one of three different positions on that—four, I guess. You could say that we should cut $12 billion and these are the right $12 billion to cut, and you will have that chance because you will have a chance to vote for this bill. You can say that we shouldn't cut any of it, that we should add to the budget. You won't have that chance because you won't be permitted to add to the budget under this bill. You will only be permitted to subtract from it.

Frankly, I find that OK but I don't think that others that don't find it OK should be denied the chance to add if they so desire.

You might say we should cut less than $12 billion from the budget. You won't have that chance because the number that is fixed in this bill must be going forward and you may say, as I would, we should cut $12 billion but we should cut a different $12 billion than the Republican have proposed. I will not get that chance. Mr. SANDERS will not get that chance. Mr. BECERRA will not get that chance. Mr. SCOTT will not get that chance, nor will any of our colleagues under the rules being brought to the floor.

Let me tell you what I want to do. I am working on and tomorrow will complete a proposal as a substitute for this rescission bill that doesn't cut the budget by $12 billion as our Republican friends would, but cuts it by $13 billion, but cuts it in different places.

The Republican proposal says to an 82-year-old woman who has a fixed income of $9,000 a year and heating bills of $1,500 a year, that the little bit of help that she gets right now, the little bit of help, the couple hundred dollars she gets to pay her electric bill, her heating bill, will be eliminated next winter.

I say instead we should cut research contracts that benefit Exxon and Mobil and Fortune 500 corporations that sell her the energy for that heat. Let's give this House a choice between cutting her heating subsidy and the research subsidy of the Fortune 500 energy companies that brought her her energy. We won't have that choice under this rule.

I would say this, to a 17-year-old who is trying to work a summer job from a low-income family so he or she can earn money to get a college education. The Republican bill would say there will be no federally sponsored summer jobs anywhere in America starting this summer.

So, Mr. Speaker, a young person who is listening to us tonight, 16 years old, planned on getting a job this summer, maybe saving $500 or $600 or $1,000 toward their school tuition, no job, nothing this summer. I say, why don't we cut out some of the bureaucratic jobs in the Department of Agriculture, the press secretaries, the statistics gatherers, the people who compile information about the American agriculture system.

I would say give us a choice between cutting summer jobs for young people around this country and bureaucratic jobs in the Department of Agriculture. we will not have that choice under this bill, and I will yield to Mr. SANDERS for a moment.

Mr. SANDERS. I thank my friend from New Jersey, as he opens up a whole area of discussion that I was intending to get to in a moment and I thank him for getting there earlier, and that is the whole issue of what some of us call corporate welfare.

Now, at the same time as we are seeing massive cutbacks in heating programs for low-income senior citizens, cutbacks in drug prevention programs, cutbacks in programs for the homeless, does my friend from New Jersey or California or Virginia happen to notice if there are any cutbacks in the corporate welfare programs that are providing tens and tens of billions of dollars of Federal subsidies and Federal aid and tax breaks for some of the largest corporations in the United States of America?

Now, maybe they are there. I happen not to have seen them. I have a list of all of the programs. I did not see them.

If I might for one moment, and there is a long list, the Progressive Policy Institute, I might say a conservative Democratic organization, suggested that there were tens and tens of billions of dollars of savings if the Congress had the guts to call for welfare reform on large corporations and wealthy people. We all know that.

The savings can take place within the energy industry where there are huge tax subsidies for companies who are extracting oil, gas and minerals. There are special tax credits for producers of fuel from nonconventional sources. There are depletion cost allowances for oil, gas, and nonfuel mineral firms. On and on it goes.

My friend from New Jersey makes exactly the right point: We should have that debate right here on the floor in front of the American people as to how we proceed to save money. And reclaiming my time, I would say to my friend from Vermont, who truly is an Independent, not only the way he thinks, I have read the bill. There were 228 cuts in the bill. Virtually none of them cut out the kind of corporate welfare, the Wall Street welfare that you make reference to.

So I would say to you that this bill, Mr. Speaker, demonstrates that the majority party of the Republicans are not against the welfare state at all. They are against the welfare state for those who tend to vote for the Democrats, but not for those who tend to vote for the Republicans. And this bill is ample evidence of that.

Let me give you other examples of things we will not get a chance to vote on that some of us would prefer. This bill says that if you are a senior citizen living in what we call section 8 subsidized housing, what that means is you live in a senior citizens high-rise and your rent is limited to 30 percent of your income and a subsidy pays less. So let us say your income is $10,000 a year, you only pay $3,000 a year toward rent and if your rent is really $5,000, the Federal Government picks up the other $2,000 so you can rent a modest apartment in a senior high-rise.

I have had senior citizens call me from around New Jersey scared to death that they are going to lose their apartments because of what is in this bill, because this bill eliminates $2.7 billion from that subsidy. You know what answer I could give them, Mr. Speaker? You just might lose your apartment, it is true.

Some of us, instead of denying housing to senior citizens under this program, would like to stop building so many courthouses and Federal buildings around America. We would like to substitute a provision that says, Do not cut the housing for senior citizens to have an apartment. Stop building a courthouse everywhere that a certain Member of Congress who is well connected enough to get one built.

Yes, we need courthouses in America, but I will tell you what. If we have to wait a few more years before we give a few more judges an elaborate place to sit and hear cases and save the money there and put it into keeping senior citizens in their homes and apartments, I think we should do that. And at the very least, Mr. Speaker, we ought to have that debate and we ought to have a choice, and this Republican rule will not let us do that.

One more example. One more example. This Republican bill says we are going to take $105 million from the program that hires remedial reading teachers, speech therapists, child psychologists, and other educators that

help young people with a learning disability get through their school years, and is going to take $38 million from a program that helps young children who do not speak English learn how to. If they come to this country from Vietnam or Cambodia or Mexico or Russia or Poland or wherever, $38 million so those teachers can help our children learn English first when they are in first grade. That is gone from this bill.

Some of us would rather take the money from something called the Export-Import Bank, which is a program paid for, Mr. Speaker, by the people watching us tonight, that gives subsidies to major American corporations to help them underwrite the sale of their goods around the world.

Now, let me say this. I hope that American companies are able to sell their goods around the world tenfold what they do right now because that is good for the country, but the people who will profit from selling those goods should underwrite the cost of selling those goods. The shareholders and investors of those companies ought to pick up the tab of this, not the American taxpayer.

So let me summarize. I would like to see us vote on an amendment to substitute the cut that cuts heating assistance for senior citizens and instead cuts energy research that benefits oil companies. We will not get that chance.

I would like to see us get rid of the cut that abolishes the summer job program for young people in urban and rural and suburban areas around this country, including my hometown, and give us a chance to get rid of some of the bureaucracy in the Department of Agriculture or the Commerce Department or the Department of the Treasury or wherever. We will not get that chance.

I would like to see us restore the cut that would say to senior citizens, we are going to take away the subsidy that helps you get an apartment and instead stop building so many courthouses for so many judges and so many Federal buildings around America. We will not get that chance.

I would like to restore the cut that says no more remedial reading teachers, no more education for children who cannot speak the English language as their first language, no more assistance for those children. I would like to get rid of some of the spending in the Export-Import Bank that helps IBM and AT&T sell their products around the world. We will not get that change.

Now, my friends as a Democrat, I have been wanting to sponsor an initiative in the last Congress called the A-to-Z spending cuts plan. Any Member can come to this floor during a special session and propose his or her best idea to cut spending. There would then be a debate and a vote.

When they were in the minority, my friends on the Republican side thought that was a terrific idea. The Speaker, the majority leader, the majority whip, all of them signed on to the bill and signed a petition forcing the bill to the floor that almost made it but did not. They thought it was a great idea that everybody's spending priorities could be brought here in debate.

Now they are in charge. Now they have the majority. Now they can win any vote because they have a certain number of more votes than we do. Now they are not quite sure the idea is so good with the majority change in this House, Mr. Speaker, because the people are fed up with a system that is closed, that does not permit free and honest debate.

We are going to have an opportunity to make a decision on Tuesday whether we have a free or honest debate about this rescissions bill. If you vote for the rule that Chairman SOLOMON wants, we are not going to have a free and honest debate. We are going to have a closed debate and a lousy bill. If you defeat the rule, give us a chance to offer these and other ideas and have the kind of discussion we are tonight, the public will be well served.

I thank the gentleman from California [Mr. BECERRA] for this time.

Mr. BECERRA. I thank the gentleman for his eloquent words to make it clear it is not just an issue of substance when it comes to this issue of cuts and our priorities, but it is also an issue of mechanics, how we actually get to the point in the House of the people of making decisions for the people of America. And when it becomes clear to the people of America that their voice, through their Representatives, is not allowed to express itself because we cannot offer amendments, because we cannot try to sell the idea of where our priorities should be and instead must accept what is force fed to us, then clearly we are not doing the jobs as Representatives and clearly that frustrates the American people even more, as the gentleman so eloquently said with regard to why we had a change in November 1994. Clearly the people are frustrated and we must do some things to change that.

Let me point out a couple of things that disturb me most about this direction that we are heading, the fact that we have closed debates, the fact that we have these cuts that go after middle-income and lower-income people, but yet will benefit the wealthy.

I cannot understand why we are seeing proposals for a capital gains tax cut that, as you can see, will benefit the most wealthy. But when you take a look at how much the average annual tax cut will be received by the income groups, it is astonishing.

If you earn $20,000 or below, you know how much you are going to get in tax cut relief over the year? About $7.63. That is what a family that earns $20,000 or below can expect to get from the capital gains tax cut proposal that the Republican majority in the House has proposed.

How much tax relief will you get if you have earned between $20,000 and $50,000 for the vast majority of American families? About $33 in the entire year. That is what a family will receive in tax relief from this Republican proposal.

Now, if you are $50,000 to $100,000, what will you get back in extra income? About $124.

Now, what happens if you earn between $100,000 and $200,000? Well, now you are going to get about 100 times what a person or a family earning $20,000 gets. You are going to get about $636 in that year.

But what will 2 percent of America's tax filers get? The 2 percent wealthiest filers of tax forms in this country, the 2 percent wealthiest Americans, what will they get, those earning $200,000 and above? Four-thousand-three-hundred and fifty-seven dollars in a year.

The folks that need it least get the most, and that, I think tells us a bit about the priorities of this new Congress, where we are heading. It seems anomalous to think that we are going to head in that direction but that is what it looks like.

Mr. SANDERS. If the gentleman would yield.

Mr. BECERRA. Of course.

Mr. SANDERS. Let us reiterate what all four of us have been talking about. No. 1, with a huge deficit, huge national debt, and terrible social needs in America, there are significant increase tax breaks for the rich, at the same time as the gap between the rich and the poor has never been wider.

□ 2245

No. 2, despite the end of the cold war, increased military spending at a time, in my view, when we should be cutting back on the military. And then in order to move toward a balanced budget, savage cutbacks which go against low-income elderly people, including people in the northern part of America who will be cold this winter if our heat program is cut.

Programs for homeless people; programs for children; cutbacks in the WIC Program. There is one program that Mr. BECERRA touched upon earlier that I think we have not perhaps discussed enough and that is a $200 million cutback for the veterans of America.

I do not apologize to anybody for being an antiwar Congressman. Yes; I voted against the Persian Gulf war. I think very often we can resolve international conflict without wars.

But it seems to me that if the Government of the United States of America sends people off to war and asks them to put their lives on the line, and they do that, and then they come back to America and 40 or 50 years goes by,

as in the case of World War II veterans and these veterans are sleeping down in VA hospitals throughout this country, it seems to me to be very, very wrong to say to those men and women who put their lives on the line, were wounded in body and wounded in spirit, that you say to them now, Hey, guess what? We have got a cutback on the VA hospitals. Thank you very much for putting your life on the line. Thank you for getting wounded, but now we have got a budget problem and we have to give tax breaks to the wealthiest people. We have to build the star wars. We have got to cut back for you.

I think that this particular cut of $200 million is absolutely uncalled for. I fear very much that as the Contract With America progresses, and I had the opportunity of meeting with Jesse Brown, the very fine and excellent Secretary for Veterans Affairs, and he shares this fear, that in the months and months to come there will be increased cutbacks on the needs of our veterans.

So, I think the bottom line is that we have got to get our priorities right and that is we respect those people who put their lives on the line and we will not go forward with those cuts.

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

Mr. SANDERS. I yield to the gentleman from New Jersey.

Mr. ANDREWS. The gentleman from Vermont makes an outstanding point about the veterans issue, and Mr. SANDERS and I have our differences on defense policy and our voting records will reflect that, but let me chime in to support a point he just made and going back to the point I made about the choices that we are not going to be given a chance to make.

This bill cuts $200 million out of this year's expenditures for the veterans' hospital system across the country and it forgives a $50 million loan to the Government of Jordan.

I am going to repeat that. This bill says to the Government of Jordan, You do not have to pay us the $50 million you owe us. We forgive you. Then it says to the veterans across this country, Oh, by the way, we are taking $200 million, four times that amount, out of your VA hospital system.

Now, some of us would like to offer an amendment that would at least reduce that cut of the $200 million by not forgiving the $50 million loan to Jordan. A lot of us would like to be able to say maybe the Jordanians should find the $50 million and pay us back.

I find it ironic that in the Persian Gulf war, which was the first vote that Mr. SANDERS and I cast as Members of this House, at the time of that war the Jordanians chose to remain neutral. They chose not to take the side of the United States for their own reasons.

The men and women who served in our Armed Forces did not choose to remain neutral. They swore allegiance to our country and served us. We are taking money away from them, who put their lives on the line, and then we are forgiving a loan to the Government of Jordan.

Mr. SANDERS. To the best of my knowledge, King Hussein is not exactly on the welfare rolls as well.

Mr. ANDREWS. I would assume King Hussein will not be receiving home heating assistance this winter.

I yield to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. I know that we are running short of time. I want to make sure that any of my colleagues have a chance to express themselves.

I want to quote something that was said by the new chairman of the Committee on the Budget, Mr. JOHN KASICH, who said this about deficit reduction. "I do not think that Republican special interest programs ought to be spared. I think we ought to look at corporate welfare before this process is over." That is a quote in the Washington Post of yesterday.

Well, I think those of us who are here, the four of us who are here, along with a number of my colleagues, I suspect both Democrat and Republican, are going to keep the chairman of the Budget Committee to his word. We want to see those cuts, because quite honestly, we have not seen them in this particular $15.5 billion rescission package, but certainly we must see those.

So I would say that in this new "Newt" world that we face, that the needs of hard-working, middle-class families should not take a back seat to the needs of the very affluent. But quite honestly, I cannot see anything that says that we are not going in that direction, when everything points to capital gains tax cuts. Cuts to the poor, cuts to the middle income in their programs. Not tax cuts, but spending cuts that would help them. Child Nutrition Program cuts, all of this, yet we are going to increase spending for the military.

And somehow we get into this whole idea about a balanced budget amendment that was up here a couple of weeks ago for debate where we had the Republican majority saying we are going to balance the budget. And they are talking about balancing the budget, which is going to cost us over the next 5 to 7 years, about $1.2 trillion and if you add the tax cuts that the Republicans are proposing, that adds another $200 billion or so. And if you add the defense billions of dollars in military increases, that adds another $100 billion.

You end up with $1.5 trillion deficit that you have to make up in about 7 years. And I take a look at that and find that they are saying they want to balance the budget and I take a look at where they are cutting now. It makes it clear to me what they are going to do to try to balance this budget, on whose backs they are going to do it, and it scares me.

And I offer my colleagues the final chance to speak.

Mr. SANDERS. I just want to thank the gentleman from California [Mr. BECERRA]. I think this is an enormously important discussion dealing with what the priorities of America should be. And I thank you very much for leading this discussion.

Mr. BECERRA. The gentleman from Virginia.

Mr. SCOTT. I want to thank the gentleman from California. This is an excellent presentation. We have choices to make and we have to look at our priorities and the quality of life and what we are doing here as legislators. And I thank you for giving us the opportunity to bring these facts forward.

Mr. ANDREWS. I join in thanking my friend from California. We are all equal Members of the People's House. We may disagree over what our priorities shall be, but we should never disagree over our right to debate those priorities.

The majority is about to deny us that right unless we defeat the rule that comes before us on Tuesday night.

Mr. BECERRA. I would say that the majority is not just denying the four of us, the majority of this House is now denying the American people the chance to express itself and that must change.

I thank all of my colleagues for being here.

GETTING OUR FINANCIAL HOUSE IN ORDER

The SPEAKER pro tempore (Mr. LONGLEY). Under the Speaker's announced policy of January 4, 1995, the gentleman from Connecticut [Mr. SHAYS] is recognized for 30 minutes as the designee of the majority leader.

Mr. SHAYS. Mr. Speaker, I thank my colleagues for the dialog they had. This is going to be a long process and hopefully when we are done we will find some common ground.

Mr. Speaker, I am speaking tonight on an issue that to me is extraordinarily important and that is getting our financial House in order. And I think in terms of this, what I have looked at as I have served now in Congress for 7 years and have been a State legislator 13 years before, I see a society where we have 12-year-olds having babies; a society where we have 14-year-olds selling drugs and 15-year-olds killing each other; a society where our 18-year-olds who have diplomas cannot even read their diplomas. I see a society where we have 25-year-olds who have never worked and 30-year-olds who are grandparents.

That is a society I see in our country, and I believe a society like that cannot long endure.

I also am seeing a society where we have had for the last 20 years extraordinarily large budget deficits. We have seen the national debt go up and up and up, our annual deficits adding to the national debt each year.

And I do not single out any one party. We all shared in that to the extent that we were a part of it. I would like to think that I was a force for restraint in this, but we had Republicans who did not want to cut defense and we had Democrats who did not want to control the growth of entitlements.

And Gramm-Rudman only focused in on what we called discretionary spending. It never dealt with entitlements. What we had was a Republican President, and now a Democratic President, who are willing to have the status quo continue.

And I have often been asked what do I think about a balanced budget amendment. I think it would be great if we did not need it. And we do not need it if we have a President who submits a balanced budget, be he a Republican or Democrat. We would not need it if we had a Congress that decided to reject unbalanced budgets. And we would not need it if we had a President, who was receiving a budget that was not balanced, that would simply decide to veto it.

But that has not been the case and that is why I have become convinced that the only way we are going to see some sanity to what we have is to require a balanced budget amendment. The White House to submit a balanced budget and Congress to vote out a budget that is, in fact, balanced.

I thought long and hard about how much have I, as a Member of Congress, or in the State House, been a part of the solution and a part of the problem. And when I was elected 7 years ago, I was determined that I could look my family in the eye and my constituents, go to a town meeting and say, I have voted to control the growth in spending. I have voted to get our financial house in order.

I am finally going to see the opportunity to have that come to fruition in a real way. When I first started out, there were about 30 of us who were voting to control the growth in spending. That number grew to about 60. It then got to be about 80, including Republicans and some Democrats. And then there were times that we were up to about 160 during the last session.

In fact, during the Penny-Kasich debate, when Republicans and Democrats, 15 Republicans, 15 Democrats, got together, led by Mr. KASICH and Mr. Penny, the Democrat, Mr. KASICH the Republican, and we put together a package of $90 billion of cuts in spending.

And I went to the White House and spoke to Leon Panetta and asked him to support this proposal and I said, "If you cannot support it, at least do not oppose it." I received my answer a week after my visit when the White House decided to oppose, for the very first time in Congress, a bipartisan effort to control spending.

I will tell you that was probably one of the most disheartening things that has happened, because I thought you want to nurture that. You want, if you have Republicans and Democrats who are willing to cut spending in Congress, no less, you want to nurture that. But it was not nurtured. It was an attempt to stamp it out. The vote failed by just four votes.

So I guess I could take some real satisfaction we came so close. And how encouraging that would have been to have seen that bipartisan effort succeed. It did not succeed and our deficits continue and Congress still is wrestling with how we get our financial house in order.

I often think about whether we are a caretaking society or a caring society. And I describe it this way: a caretaking society is a society that tries to take care of people, and then those who vote for the bills that take care of people feel good that they have voted for something that takes care of someone, without asking what are they actually doing.

To me, the preferable one is the caring society. The caretaking society gives the food; the caring society shows someone how to grow the seed so it becomes food and feeds them until they get to that point.

Now, the stereotype I have of a liberal is an individual who sees someone drowning 50 feet out and runs to the end of the pier and grabs 100 feet of rope and throws that rope out to the person who is drowning 50 feet out.

□ 2300

The person who is drowning is trying to grab onto the rope and make it taut, ready to be pulled in. The stereotype liberal, when the line is taut, drops the line and says, "I have done my good deed. Now on to the next good deed."

I have just as discomforting a view of the stereotyped conservative who sees someone drowning 50 feet out, grabs 25 feet of line, throws it to the individual, it does not quite reach him, and says, "You swim halfway, and I will do my part and I will pull you in."

I have to feel that somewhere between that stereotype of the liberal and the stereotype of the conservative is a sensible program that tries to reach out to the person who is drowning, takes the temporary step of pulling them in, throwing them enough line to work, making sure the program works, not walking on to the next program, pulls the individual in, and then just does not part company, but teaches that person how to swim.

Mr. Speaker, what I wrestle with is the fact that as I look at this budget chart, and the task that I have as a member of the Committee on the Budget, what is in the dark green is basically what we call entitlements; Social Security. Entitlement is not a bad word, it means someone is truly entitled. It has gotten to mean something that is not always positive, but someone who has paid into Social Security is entitled because they put money into a system and expect to receive it back in retirement.

In the shades of different green there is Medicare, that is 10 percent of the budget; there is Medicaid, which is 5.7. Then there are other entitlements that are 121.3 percent. These entitlements add up to 50 percent of the budget. They are on automatic pilot.

I have been here since 1987, and I rarely get an opportunity to vote on these, because they are in the law, and if the law is not changed, they just keep happening. The numbers keep growing, and the costs keep growing. They begin to consume more and more of our Federal budget.

No one, Mr. Speaker, Republican and Democrat, has yet to truly address entitlements. We also have something else that is on automatic pilot for the most part. It is in yellow, and it is interest in the national debt.

Collectively, entitlements, 49 percent of our budget; interest on the national debt, 15 percent of our budget—and by the way, interest on the national debt is $234 billion—two-thirds of our budget are on automatic pilot.

What do I vote on? I get to vote on 36 percent, which is in the 3 tones of pink, domestic discretionary spending. It funds the judicial, legislative, executive branch, all the departments of the executive branch, all the grants of the executive branch, minus the Defense Department.

The Defense Department is so large that we just isolate it as a similar expenditure. It is almost identical, it is 1 percent more than discretionary domestic spending. Defense is 1 percent more. Then we have what we call international, about 1.4 percent. That is the State Department and foreign aid.

I vote, when I get the Committee on Appropriations expenditure bill, I vote on one-third of this entire pie. Two-thirds has been on automatic pilot, and growing.

Mr. Speaker, what do we need to do? We need to take an honest look at what we can control. Democrats and Republicans, candidly, have done a pretty good job of trying to control the growth in discretionary spending, both defense and nondefense. You see a good example of it right here.

You see the growth in spending for each of the next, from 1995 to the year 2000, and you see the annual growth. What was in the solid greens, the entitlements, different shades, they are growing at extraordinary rates: Social Security, 5.2; Medicare, 9.6; Medicaid, 9.1. The numbers we have from CBO,

Congressional Budget Office, are higher, but I used the President's own numbers. Other entitlements are at 6.1 percent.

What is happening is interest on the national debt is going up nearly 6 percent. The entitlements are growing, they are 50 percent of the budget. They are on automatic pilot. What I vote on, defense spending, will go down three-tenths, will go down less than a percent, three-tenths of 1 percent. Foreign aid and the State Department will go down about 1.9 percent during each of the next 5 years. Domestic spending is only going to go up a tenth of 1 percent.

So what I vote on, what we debate, the discretionary spending out of Committee on Appropriations is basically, for the next 5 years, at a standstill. This is what we have to address. We have to address the extraordinary growth of Medicare and Medicaid.

Mr. Speaker, there was discussion earlier on about the food and nutrition program. I will use this as an example of what makes the debate difficult. What makes the debate difficult is that people simply are not leveling with the American people about what is truly happening. We may disagree with the WIC Program and the School Lunch Program as proposed by the Republicans, but we know that the School Lunch Program is going to go up at 4.5 percent during each of the next 5 years. This is in the solid blue. The black is the number that it would grow without our program. It would be slightly more expensive, ever so slightly. You probably cannot even see it.

The program devised by the Republicans will allow spending on the School Lunch Program to go up 4.5 percent during each of the next 5 years. The WIC Program is seen in the red. It also will continue to grow at that basic rate of over 4 percent a year. We can call it a cut in spending, yes, I guess you could call it that. It would not be accurate, but you could call it.

What you can call it is a growth in spending, a significant growth in spending of 4.5 percent as it relates to the School Lunch Program.

The problem we have in Washington is, and I did not have it when I was in the State House, we could never get away with it in the State House, but when I came down here I would always hear how we were cutting spending, yet I was finding that spending was continuing to grow. I could not figure out how we could call it a cut in spending if it was continuing to grow.

Then I learned after just watching this process for a while that if a program cost $100 million to run this year, and $105 next year, and we appropriate $103 million, Washington, the White House, Congress, both parties, have historically, and the press, have historically called it a $2 million cut in spending. Even though it went from $100 to $103 million, they are going to call it a $2 million cut in spending, because they said it should have gone up to $105. What most people would call it is a $3 million increase in spending.

We are not going to succeed in balancing our budget unless we are able to get a handle on the entitlement spending that is on automatic pilot and slow the growth.

What we anticipate by the year 2002 is that spending, without our taking any action, will grow over $3 trillion of new money. We want to bring that down to a level of growth of about $1.9 trillion, almost $2 trillion. We want it to grow, we just do not want it to grow as quickly.

The reason we want it not to grow as quickly is we want to eliminate the deficits. We want to make the interest of what we pay on the national debt smaller. I think of the generations that have preceded me in Congress, the Members that preceded and voted out these large deficits, and those that were here while I was here who continue to vote out large deficits.

We now spend $234 billion on interest on the national debt. Think of what we could do with that money if it was not interest on the national debt. Think of the programs that we could do, that would be meaningful.

Mr. Speaker, I do not think we are going to succeed in slowing the growth of Medicare and Medicaid unless it is bipartisan. I'm not sure how that is going to happen, because the dialog to date has not been encouraging. We have not had the President come in with a recommendation on how he would suggest we slow the growth in spending; still spend more, just not spend as much.

We are having a dialog now where Republicans are saying we need to take tough stands on some of these programs, tough; we are going to allow the nutrition program to go up 4.5 percent, instead of 5.2 percent. I guess we could call it tough. I think it makes sense.

I think it makes sense to block grant the program. I think it makes sense to spend more of the money on the poor children in our school districts. I had some of the school nutrition people come to my office and tell me they did not want that to happen, they want to subsidize lunch for all students. I said "I want it to go to the students who cannot pay for it."

They said "We do not want two lines in our school system, the poorer kids, and the kids who can afford that." I said "Do not have two lines, have one line, but give one of the students a voucher, a coin, something that enables him to have a subsidized lunch."

So as I think about this debate, and wonder if we are going to continue the way we are going, or whether we are going to have change, I am encouraged. I think that there are a number of Republicans who are willing to take some tough votes and take responsible votes. I think there are going to be a number of Democrats who will as well. I think we are going to have an honest debate about what was discussed earlier about taxes. To me, deficit reduction comes before cutting taxes.

I might have a disagreement as to what the tax cuts do. I happen to think a capital gains cut makes sense. I happen to think that what we need to worry about is what happens to the money once it is provided to that taxpayer, what do they do with it.

If we can provide tax cuts where a person takes the money and invests it in new plant and equipment and increases productivity, and it means more jobs for Americans, I think it makes sense. If it means that it is not going to encourage growth, then I have a question mark.

□ 2310

The jury is still out as to what is going to happen to the tax cuts. They will be funded. I think they will pass, but ultimately what the Senate will do for me, I am going to vote to control the growth in spending. I am going to allow my Government to spend more money on these very needed programs. I am just going to have the growth be more sensible and not so out of control. And I am going to vote to make rational controls as well to some of the discretionary spending that we see.

We need to slow the growth in spending. We are going to spend more, we are just not going to spend as much as we have been spending.

With that, Mr. Speaker, I would like to thank you and the staff who are here staying up late to allow us to share our views on what we think are some very important issues.

RULES OF PROCEDURE FOR THE JOINT COMMITTEE ON PRINTING FOR THE 104TH CONGRESS

(Mr. THOMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. THOMAS. Mr. Speaker, pursuant to and in accordance with clause 2 (a) of rule XI of the Rules of the House of Representatives and clause B of rule I of the Rules of the Joint Committee on Printing, I submit for publication in the CONGRESSIONAL RECORD a copy of the rules of the Joint Committee on Printing for the 104th Congress as approved by the Committee on March 6, 1995.

JOINT COMMITTEE ON PRINTING

RULE 1—COMMITTEE RULES

(a) The rules of the Senate and House insofar as they are applicable, shall govern the Committee.

(b) The Committee's rules shall be published in the Congressional Record as soon as possible following the Committee's organizational meeting in each odd-numbered year.

(c) Where these rules require a vote of the members of the Committee, polling of members either in writing or by telephone shall not be permitted to substitute for a vote taken at a Committee meeting, unless the ranking minority member assents to waiver of this requirement.

(d) Proposals for amending Committee rules shall be sent to all members at least one week before final action is taken thereon, unless the amendment is made by unanimous consent.

RULE 2—REGULAR COMMITTEE MEETINGS

(a) The regular meeting date of the Committee shall be the second Wednesday of every month when the House and Senate are in session. A regularly scheduled meeting need not be held if there is no business to be considered and after appropriate notification is made to the ranking minority member. Additional meetings may be called by the chairman as he many deem necessary or at the request of the majority of the members of the Committee.

(b) If the chairman of the Committee is not present at any meeting of the Committee, the vice-chairman or ranking member of the majority party on the Committee who is present shall preside at the meeting.

RULE 3—QUORUM

(a) Five members of the Committee shall constitute a quorum which is required for the purpose of closing meetings, promulgating Committee orders or changing the rules of the Committee.

(b) Three members shall constitute a quorum for purposes of taking testimony and receiving evidence.

RULE 4—PROXIES

(a) Written or telegraphic proxies of Committee members will be received and recorded on any vote taken by the Committee, except at the organization meeting at the beginning of each Congress or for the purpose of creating a quorum.

(b) Proxies will be allowed on any such votes for the purpose or recording a member's position on a question only when the absentee Committee member has been informed of the question and has affirmatively requested that he be recorded.

RULE 5—OPEN AND CLOSED MEETINGS

(a) Each meeting for the transaction of business of the Committee shall be open to the public except when the Committee, in open session and with a quorum present, determines by roll call vote that all or part of the remainder of the meeting on that day shall be closed to the public. No such vote shall be required to close a meeting that relates solely to internal budget or personnel matters.

(b) No person other than members of the Committee, and such Congressional staff and other representatives as they may authorize, shall be present in any business session which has been closed to the public.

RULE 6—ALTERNATING CHAIRMANSHIP AND VICE CHAIRMAN BY CONGRESSES

(a) The chairmanship and vice chairmanship of the Committee shall alternate between the House and the Senate by Congresses. The senior member of the minority party in the House of Congress opposite of that of the chairman shall be the ranking minority member of the Committee.

(b) In the event the House and Senate are under different party control, the chairman and vice chairman shall represent the majority party in their respective Houses. When the chairman and vice chairman represent different parties, the vice chairman shall also fulfill the responsibilities of the ranking minority member as prescribed by these rules.

RULE 7—PARLIAMENTARY QUESTIONS

Questions as to the order of business and the procedures of the Committee shall in the first instance be decided by the chairman, subject always to an appeal to the Committee.

RULE 8-HEARINGS: PUBLIC ANNOUNCEMENTS AND WITNESSES

(a) The chairman, in the case of hearings to be conducted by the Committee, shall make public announcement of the date, place and subject matter of any hearing to be conducted on any measure or matter at least one week before the commencement of that hearing unless the Committee determines that there is good cause to begin such hearing at an earlier date. In the latter event, the chairman shall make such public announcement at the earliest possible date. The staff director of the Committee shall promptly notify the Daily Digest of the Congressional Record as soon as possible after such public announcement is made.

(b) So far as practicable, all witnesses appearing before the Committee shall file advance written statements of their proposed testimony at least 48 hours in advance of their appearance and their oral testimony shall be limited to brief summaries. Limited insertions or additional germane material will be received for the record, subject to the approval of the chairman.

RULE 9—OFFICIAL HEARING RECORD

(a) An accurate stenographic record shall be kept of all Committee proceedings and actions. Brief supplemental materials when required to clarify the transcript may be inserted in the record subject to the approval of the chairman.

(b) Each member of the Committee shall be provided with a copy of the hearings transcript for the purpose of correcting errors of transcription and grammar, and clarifying questions or remarks. If any other person is authorized by a Committee member to make his corrections, the staff director shall be so notified.

(c) Members who have received unanimous consent to submit written questions to witnesses shall be allowed two days within which to submit these to the staff director for transmission to the witnesses. The record may be held open for a period not to exceed two weeks awaiting the responses by witnesses.

(d) A witness may obtain a transcript copy of his testimony given at a public session or, if given at an executive session, when authorized by the Committee. Testimony received in closed hearings shall not be released or included in any report without the approval of the Committee.

RULE 10—WITNESSES FOR COMMITTEE HEARINGS

(a) Selection of witnesses for Committee hearings shall be made by the Committee staff under the direction of the Chairman. A list of proposed witnesses shall be submitted to the members of the Committee for review sufficiently in advance of the hearings to permit suggestions by the Committee members to receive appropriate consideration.

(b) The Chairman shall provide adequate time for questioning of witnesses by all members, including minority members, and the rule of germaneness shall be enforced in all hearings.

(c) Whenever a hearing is conducted by the Committee upon any measure or matter, the minority of the Committee shall be entitled, upon unanimous request to the Chairman before the completion of such hearings, to call witnesses selected by the minority to testify with respect to the measure or matter during at least one day of hearing thereon.

RULE 11—CONFIDENTIAL INFORMATION FURNISHED TO THE COMMITTEE

The information contained in any books, papers or documents furnished to the Committee by any individual, partnership, corporation or other legal entity shall, upon the request of the individual, partnership, corporation or entity furnishing the same, be maintained in strict confidence by the members and staff of the Committee, except that any such information may be released outside of executive session of the Committee if the release thereof is affected in a manner which will not reveal the identity of such individual, partnership, corporation or entity in connection with any pending hearing or as a part of a duly authorized report of the Committee if such release is deemed essential to the performance of the functions of the Committee and is in the public interest.

RULE 12—BROADCASTING OF COMMITTEE HEARINGS

The rule for broadcasting of Committee hearings shall be the same as Rule XI, clause 3, of the Rules of the House of Representatives.

RULE 13—COMMITTEE REPORTS

(a) No Committee report shall be made public or transmitted to the Congress without the approval of a majority of the Committee except when Congress has adjourned; Provided, that any member of the Committee may make a report supplementary to or dissenting from the majority report. Such supplementary or dissenting reports should be as brief as possible.

(b) Factual reports by the Committee staff may be printed for distribution to Committee members and the public only upon authorization of the chairman either with the approval of a majority of the Committee or with the consent of the ranking minority member.

RULE 14—CONFIDENTIALITY OF COMMITTEE REPORTS

No summary of a Committee report, prediction of the contents of a report, or statement of conclusions concerning any investigation shall be made by a member of the Committee or by any staff member of the Committee prior to the issuance of a report of the Committee.

RULE 15—COMMITTEE STAFF

(a) The Committee shall have a professional and clerical staff under the supervision of a staff director. Staff operating procedures shall be determined by the staff director, with the approval of the chairman of the Committee, and after notification to the ranking minority member with respect to basic revisions of existing procedures. The staff director, under the general supervision of the chairman, is authorized to deal directly with agencies of the Government and with non-Government groups and individuals on behalf of the Committee.

(b) The chairman and vice chairman, on behalf of their respective bodies of Congress, shall be entitled to designate two senior staff members each. During any Congress in which both Houses are under the control of the same party, the ranking minority member, on behalf of his party, shall be entitled to designate two senior staff members.

(c) All other staff members shall be selected on the basis of their training, experience and attainments, without regard to

race, religion, sex, color, age, national origin or political affiliations, and shall serve all members of the Committee in an objective, non-partisan manner.

RULE 16—COMMITTEE CHAIRMAN

The chairman of the Committee may establish such other procedures and take such actions as may be necessary to carry out the foregoing rules or to facilitate the effective operation of the Committee. Specifically, the chairman is authorized, during the interim periods between meetings of the Committee, to act on all requests submitted by any executive department, independent agency, temporary or permanent commissions and committees of the Federal Government, the Government Printing Office and any other Federal Government, the Government Printing Office and any other Federal entity, pursuant to the requirements of applicable Federal law and regulations.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. LOBIONDO (at the request of Mr. ARMEY) until 4 p.m. today, on account of a medical emergency.

Mrs. CUBIN (at the request of Mr. ARMEY) after 2:50 p.m. today through tomorrow, on account of surgery.

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 Members (at the request of Mr. KENNEDY of Rhode Island) to revise and extend their remarks and include extraneous material:)

Mr. WYNN, for 5 minutes, today.

Mr. VOLKMER, for 5 minutes, today.

Mrs. CLAYTON, for 5 minutes, today.

Mr. SANDERS, for 5 minutes, today.

Mr. FIELDS of Louisiana, for 5 minutes, today.

Mr. HOYER, for 5 minutes, today.

(The following Members (at the request of Mr. TALENT) to revise and extend their remarks and include extraneous material:)

Mr. ENSIGN, for 5 minutes, today.

Mr. WHITFIELD, for 5 minutes, today.

Mr. BRYANT of Tennessee, for 5 minutes, today.

Mr. KINGSTON, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. HAYWORTH, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. FROST, to include extraneous matter in the CONGRESSIONAL RECORD, on House Resolution 109, in the House today.

(The following Members (at the request of (Mr. KENNEDY of Rhode Island) and to include extraneous matter:)

Mr. MATSUI in two instances.

Mr. ABERCROMBIE.

Mr. GEJDENSON.

Mr. LANTOS.

Mrs. LOWEY.

Mr. WAXMAN.

Mr. ACKERMAN.

Ms. KAPTUR.

Mr. HASTINGS of Florida.

Mr. HAMILTON.

Mr. MANTON.

Mr. RICHARDSON.

Ms. ESHOO in three instances.

Mr. PALLONE.

(The following Members (at the request of Mr. TALENT) and to include extraneous matter:)

Mr. COMBEST.

Mr. STUMP.

Mr. KIM.

Mr. PETRI.

Mr. NEY.

Mr. BILBRAY.

Mr. BARR.

ADJOURNMENT

Mr. SHAYS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 11 o'clock and 10 minutes p.m.), the House adjourned until tomorrow, Friday, March 10, 1995, 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:

509. A communication from the President of the United States, transmitting the fifth monthly report on the situation in Haiti, pursuant to 50 U.S.C. 1541 note; to the Committee on International Relations.

510. A communication from the President of the United States, transmitting a report on the status of efforts to obtain Iraq's compliance with the resolutions adopted by the U.N. Security Council, pursuant to Public Law 102-1, section 3 (105 Stat. 4); to the Committee on International Relations.

511. A communication from the President of the United States, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

512. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting notification of the Department's intent to reprogram certain fiscal year 1995 funds made available to monitor the cease-fire between Ecuador and Peru, pursuant to Public Law 103-306, section 515; to the Committee on International Relations.

513. A letter from the Auditor, District of Columbia, transmitting a copy of a report entitled "Audit of the Operations of the Office of the Campaign Finance," pursuant to D.C. Code, section 47-117(d); to the Committee on Government Reform and Oversight.

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. YOUNG of Alaska: Committee on Resources. H.R. 402. A bill to amend the Alaska Native Claims Settlement Act, and for other purposes (Rept. 104-73). 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. CAMP (for himself and Mr. LEVIN):

H.R. 1178. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of effectively connected investment income of insurance companies; to the Committee on Ways and Means.

By Mr. CLEMENT (for himself and Mr. DUNCAN):

H.R. 1179: A bill to authorize appropriations for the preservation and restoration of historic buildings at historically black colleges and universities; to the Committee on Resources.

By Mr. UPTON (for himself, Mr. BOUCHER, and Mr. BONIOR):

H.R. 1180. A bill to amend the Solid Waste Disposal Act to provide congressional authorization for restrictions on receipt of out-of-State municipal solid waste and for State control over transportation of municipal solid waste, and to clarify the authority for certain municipal solid waste flow control arrangements, and for other purposes; to the Committee on Commerce.

By Mr. FLAKE:

H.R. 1181. A bill to strengthen families receiving aid to families with dependent children through education, job training, savings, and investment opportunities, and to provide States with greater flexibility in administering such aid in order to help individuals make the transition from welfare to employment and economic independence; to the Committee on Ways and Means.

By Mr. FRANK of Massachusetts:

H.R. 1182. A bill to permit certain Federal employees who retired or became entitled to receive compensation for work injury before December 9, 1980, to elect to resume coverage under the Federal employees' group life insurance program; to the Committee on Government Reform and Oversight.

By Mrs. MALONEY:

H.R. 1183. A bill to amend title II of the Social Security Act to provide more appropriate remedies for failures to report information relating to the earnings test; to the Committee on Ways and Means.

By Mr. MCCOLLUM (for himself, Mr. LEACH, Mrs. ROUKEMA, Mr. BEREUTER, Mr. ROTH, Mr. BAKER of Louisiana, Mr. LAZIO of New York, Mr. BACHUS, Mr. CASTLE, Mr. KING, Mr. ROYCE, Mr. WELLER, Mr. EHRLICH, Mr. CHRYSLER, Mr. CREMEANS, Mr. HEINEMAN, and Mr. LOBIONDO):

H.R. 1184. A bill to amend the Truth in Lending Act to clarify the intent of such act and to reduce burdensome regulatory requirements on creditors; to the Committee on Banking and Financial Services.

By Mr. MICA:

H.R. 1185. A bill to amend chapters 83 and 84 of title 5, United States Code, to increase the percentage of basic pay required to be contributed by individuals; to change the method for computing average pay; and for

other purposes; to the Committee on Government Reform and Oversight.

By Mr. OXLEY:

H.R. 1186. A bill to provide for the safety of journeymen boxers, and for other purposes; to the Committee on Economic and Educational Opportunities, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. PETRI (for himself (by request) and Mr. LAUGHLIN):

H.R. 1187. A bill to increase the safety for the public health and the environment by reducing the risks associated with the pipeline transportation of natural gas and hazardous liquids, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RAHALL:

H.R. 1188. A bill to provide for the preservation of the coal mining heritage of southern West Virginia, and for other purposes; to the Committee on Resources.

By Mr. SCHUMER:

H.R. 1189. A bill to prohibit arms transfers and other military assistance to certain countries unless the President certifies that a state of war does not exist between the country concerned and Israel and that such country has accorded formal recognition to the sovereignty of Israel; to the Committee on International Relations.

By Mr. SCHUMER (for himself, Mrs. MALONEY, Mr. NADLER, Ms. VELAZQUEZ, Mr. MANTON, Mr. ENGEL, Mrs. LOWEY, and Mr. TORRICELLI):

H.R. 1190. A bill to amend the Internal Revenue Code of 1986 with respect to the treatment of cooperative housing corporations; to the Committee on Ways and Means.

By Mr. SCHUMER:

H.R. 1191. A bill to prohibit insurers from denying health insurance coverage or benefits or varying premiums based on the status of an individual as a victim of domestic violence, and for other purposes; to the Committee on Commerce, and in addition to the Committees on the Judiciary, and Economic and Educational Opportunities, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 1192. A bill to amend the Export Administration Act of 1979 to grant a private right of action to persons injured by reason of a violation of the antiboycott provisions, and for other purposes; to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

H.R. 1193. A bill to require that the United States Government hold certain discussions and report to the Congress with respect to the secondary boycott of Israel by Arab countries; to the Committee on International Relations, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SHAYS (for himself and Mr. PARKER):

H.R. 1194. A bill to require recreational camps to report information concerning deaths and certain injuries and illnesses to the Secretary of Health and Human Services, to direct the Secretary to collect the information in a central data system, to establish a President's Advisory Council on Recreational Camps, and for other purposes; to the Committee on Economic and Educational Opportunities.

By Mr. STUMP (for himself, Mr. CALLAHAN, and Mr. EVERETT):

H.R. 1195. A bill to impose certain requirements on health care liability claims; to the Committee on the Judiciary.

By Mr. McDERMOTT (for himself, Mr. WAXMAN, Mr. CONYERS, Mr. ABERCROMBIE, Mr. PAYNE of New Jersey, Ms. VELAZQUEZ, Mr. OBERSTAR, Mr. STARK, Mr. SCOTT, Mr. VENTO, Mr. GONZALEZ, Mr. YATES, Mr. DELLUMS, Mr. BECERRA, Ms. WOOLSEY, Mr. SANDERS, Mr. MARTINEZ, Mr. DIXON, Mr. OLVER, Mrs. COLLINS of Illinois, Mr. GIBBONS, Mr. WATT of North Carolina, Mr. GUTIERREZ, Mr. HINCHEY, Mr. EVANS, Mr. ENGEL, Mr. FRANK of Massachusetts, Ms. PELOSI, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MILLER of California, Mr. COYNE, Mr. SABO, Mr. CLAY, Mr. BERMAN, Mrs. MEEK of Florida, Mr. TORRES, Mr. OWENS, Mr. SCHUMER, Mr. STOKES, Mr. ROMERO-BARCELO, Mr. LEWIS of Georgia, Mr. STUDDS, Mr. TOWNS, Mr. NADLER, Ms. NORTON, Mr. FATTAH, Mr. SERRANO, Mr. FORD, Mr. RANGEL, Mrs. MINK of Hawaii, Mr. FRAZER, Ms. RIVERS, Mr. FLAKE, Mr. MOAKLEY, Mr. KENNEDY of Massachusetts, and Ms. WATERS):

H.R. 1200. A bill to provide for health care for every American and to control the cost and enhance the quality of the health care system; to the Committee on Commerce, and in addition to the Committees on Ways and Means, Government Reform and Oversight, National Security, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ENGEL (for himself, Mr. McCOLLUM, Mr. ANDREWS, Mr. LINDER, and Mr. PALLONE):

H. Con. Res. 35. Concurrent resolution expressing the sense of the Congress that Pakistan should be designated as a state sponsor of terrorism; to the Committee on International Relations.

By Mr. SCHUMER:

H. Con. Res. 36. Concurrent resolution concerning the 3,000th anniversary of King David's establishment of Jerusalem as the capital of the Jewish kingdom; to the Committee on International Relations.

H. Con. Res. 37. Concurrent resolution concerning the 28th anniversary of the reunification of Jerusalem; to the Committee on International Relations.

By Mr. GONZALEZ (for himself, Mr. LAFALCE, Mr. VENTO, Mr. SCHUMER, Mr. KENNEDY of Massachusetts, Mr. FLAKE, Mr. MFUME, Ms. WATERS, Mr. SANDERS, Mrs. MALONEY, Mr. GUTIERREZ, Ms. ROYBAL-ALLARD, Mr. BARRETT of Wisconsin, Ms. VELAZQUEZ, Mr. WYNN, Mr. FIELDS of Louisiana, Mr. WATT of North Carolina, Mr. HINCHEY, and Mr. ACKERMAN):

H. Res. 110. Resolution affirming the support of the House of Representatives for the American consumer banking bill of rights; to the Committee on Banking and Financial Services.

By Mr. STOCKMAN:

H. Res. 111. Resolution providing for consideration of the bill (H.R. 807) to protect the Constitution of the United States from unauthorized encroachment into legislative powers by the executive branch, and to protect the American taxpayer from unauthorized encroachment into his wallet by an unconstitutional action of the President; to the Committee on Rules.

H. Res. 112. Resolution providing for consideration of the bill (H.R. 807) to protect the Constitution of the United States from unauthorized encroachment into legislative powers by the executive branch, and to protect the American taxpayer from unauthorized encroachment into his wallet by an unconstitutional action of the President; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mrs. FOWLER:

H.R. 1196. A bill to extend the deadline for the conversion of the vessel M/V *Twin Drill;* to the Committee on Transportation and Infrastructure.

By Mr. KENNEDY of Rhode Island:

H.R. 1197. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for each of 10 vessels, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. REED:

H.R. 1198. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Isabelle;* to the Committee on Transportation and Infrastructure.

H.R. 1199. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the fisheries for the vessel *Aboriginal;* to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 44: Mr. McDERMOTT, Mr. OBERSTAR, Mr. ORTON, Mr. MINETA, and Ms. LOWEY.

H.R. 62: Mr. BAKER of California.

H.R. 70: Mr. POSHARD.

H.R. 118: Mr. HEINEMAN and Mr. HERGER.

H.R. 127: Mrs. KELLY, Mr. PAXON, Mr. OBERSTAR, and Mr. FAWELL.

H.R. 139: Mr. PORTER.

H.R. 208: Mr. PAXON.

H.R. 224: Mr. EMERSON.

H.R. 244: Mr. QUINN, Mr. HINCHEY, Mr. TORRICELLI, Ms. VELAZQUEZ, Mr. KLUG, Mr. MARTINI, and Mr. RUSH.

H.R. 248: Mr. GEJDENSON.

H.R. 485: Mr. FOX.

H.R. 553: Mr. MENENDEZ.

H.R. 559: Mr. SERRANO.

H.R. 567: Mr. BRYANT of Texas, Mr. FATTAH, and Ms. LOWEY.

H.R. 598: Mr. CALVERT, Mrs. LINCOLN, Mr. TIAHRT, Mr. GREENWOOD, Mr. KLUG, Mr. NORWOOD, Mr. TAYLOR of North Carolina, and Mr. MOORHEAD.

H.R. 613: Mr. LIPINSKI.

H.R. 739: Mr. BAKER of Louisiana.

H.R. 755: Ms. RIVERS and Mr. DEAL of Georgia.

H.R. 801: Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. BALDACCI, Mr. BERMAN, Mr. BEILENSON, Mr. BISHOP, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. CLAY, Mrs. CLAYTON, Mr. CONYERS, Mr. DEFAZIO, Mr. DELLUMS, Mr. DICKS, Mr. DICKEY, Mr. DIXON, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mr. FARR, Mr. FIELDS of Louisiana, Mr. FILNER, Mr. FROST, Ms. FURSE, Mr. GENE GREEN of Texas, Mr. HILLIARD, Mr. HOLDEN, Mr. HOYER, Ms. JACKSON-LEE, Ms. KAPTUR, Mr. LEWIS of Georgia, Mr. LIPINSKI, Ms. LOFGREN, Mrs. LOWEY, Mrs. MALONEY, Mr. MATSUI, Mr. MCHALE, Ms. MCKINNEY, Mrs. MEEK of Florida, Mr. MEEHAN, Mr. MFUME, Mrs. MINK of Hawaii, Mr. MINETA, Mr. NADLER, Mr. NEAL of Massachusetts, Mr. OLVER, Mr. PASTOR, Mr. PARKER, Ms. PELOSI, Mr. POMEROY, Mr. PORTER, Mr. RAHALL, Mr. RICHARDSON, Ms. RIVERS, Ms. ROYBAL-ALLARD, Mr. ROEMER, Mr. SABO, Mr. SANDERS, Mr. SAWYER, Mr. SERRANO, Mrs. SCHROEDER, Mr. SCHUMER, Mr. SPRATT, Mr. STARK, Mr. STUDDS, Mr. STUPAK, Mr. TAYLOR of North Carolina, Mr. TRAFICANT, Ms. VELAZQUEZ, Mr. VENTO, Mr. VOLKMER, Mr. WYNN, and Mr. WICKER.

H.R. 809: Mr. FOX.

H.R. 914: Mr. OBEY, Mr. FRANK of Massachusetts, and Mr. BEREUTER.

H.R. 977: Mr. PAXON.

H.R. 987: Mr. SKEEN, Mr. GENE GREEN of Texas, Mr. FROST, and Mr. ROGERS.

H.R. 1000: Mr. BORSKI, Mr. FATTAH, Mrs. LOWEY, Mr. MCDERMOTT, Mrs. MALONEY, Mr. MINETA, and Mr. PETERSON of Minnesota.

H.R. 1020: Mr. SPRATT, Mr. FAWELL, Mr. PETERSON of Florida, Mr. CANADY, and Mr. PORTER.

H.R. 1066: Mr. WALSH, Mr. PACKARD, and Mr. KNOLLENBERG.

H.R. 1085: Mr. JACOBS.

H.R. 1104: Mr. ROYCE, Mr. MEEHAN, Mr. HEINEMAN, Mr. MCINTOSH, Mr. MCINNIS, Mr. LAHOOD, and Mr. BLUTE.

H.R. 1110: Mr. KNOLLENBERG, Mr. HANCOCK, Mr. PORTER, Mr. KLUG, and Mr. BARTLETT of Maryland.

H.R. 1120: Mr. HEINEMAN, Mr. HOBSON, Ms. MOLINARI, and Mr. LIVINGSTON.

H.R. 1145: Mr. CUNNINGHAM and Ms. LOFGREN.

H.J. Res. 3: Mr. LAHOOD.

H. Con. Res. 12: Mrs. COLLINS of Illinois, Mr. DUNCAN, and Mr. STUMP.

H. Con. Res. 19: Mrs. CHENOWETH and Mr. CALVERT.

H. Res. 102: Mrs. MYRICK.

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. 1120: Mr. STEARNS.

PETITIONS, ETC.

Under clause 1 of rule XXII,

3. The Speaker presented a petition of Western Shoshone National Council, Indian Springs, NV, relative to the Shoshone nation reaffirmation of their sovereignty; which was referred to the Committee on Resources.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.J. RES. 2

OFFERED BY: MR. HOYER

AMENDMENT NO. 26: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

"SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. Any election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 4. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.".

H.J. RES. 2

OFFERED BY: MR. ORTON

AMENDMENT NO. 27: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE—

"No person shall be elected to the office of Representative more than six times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than one year. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.".

H.J. RES. 2

OFFERED BY: MR. ORTON

AMENDMENT NO. 28: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of it submission for ratification:

"ARTICLE—

"SECTION 1. The term of office of Representatives shall be four years and shall begin at noon on the third day of January of the year in which the term of office of the President begins.

"SECTION 2. No person shall be elected to the office of Representative more than three times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than two years. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.".

H.J. RES. 2

OFFERED BY: MR. ORTON

AMENDMENT NO. 29: Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:

"ARTICLE —

"SECTION 1. No person who has been elected for a full term of the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

"SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

"SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

"SECTION 4. Any election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

"SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.".

"Person shall be elected to the office of Representative more than six times, excluding any election of a person to fill a vacancy of an office of a Representative if such person has held such office for less than one year. No person shall be elected to the office of Senator more than twice, excluding any election of a person to fill a vacancy of an office of a Senator if such person has held such office for less than three years. For purposes of this section, an election which occurs before the date of the ratification of this article shall be included in determining the number of times a person has been elected as a Representative or Senator.".

EXTENSIONS OF REMARKS

KILLINGS OF U.S. DIPLOMATS IN KARACHI, PAKISTAN

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. ACKERMAN. Mr. Speaker, I rise today to express my condolences to the families of the two Americans killed Tuesday in a terrorist attack in Karachi, Pakistan. United States personnel in Pakistan have long faced extremely dangerous and difficult conditions, especially in Karachi. Despite these obstacles, Americans have worked bravely and loyally.

I also wish to voice my outrage at this brutal murder of the two American diplomats and the wounding of a third. This tragedy is made worse in that it was not a random attack, but targeted American consulate personnel. The perpetrator is still at large.

Last month, a major suspect in the 1993 World Trade Center bombing fled to Pakistan. Because of the assistance of U.S. authorities, he was captured and extradited to face trial in New York. Extremist and terrorist groups with the mission of spreading violence through South Asia and other parts of the world continue to operate training centers in northern Pakistan, and apparently feel comfortable in seeking refuge there.

We must press the government of Pakistan to apprehend and prosecute the perpetrators of this crime. Pakistan's Government must also take more effective measures to control outlaw terrorist groups with training centers based in Pakistan. When Prime Minister Bhutto visits the United States next month, I urge the administration and Members of Congress to raise these issues in the strongest possible ways.

Given the existence of terrorist training centers in Pakistan, the question arises as to the charges that the Islamabad Government is "looking the other way," and why Pakistan should not be placed on the United States list of "State Sponsors of Terrorism." I urge Secretary of State Christopher to review our relations with Pakistan in light of these ongoing problems and in response to yesterday's horrible attack.

H.R. 1142—CODE OF CONDUCT FOR U.S. BUSINESSES IN CHINA: NEW LEGISLATION INTRODUCED

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. LANTOS. Mr. Speaker, I rise today to call to the attention of my colleagues legislation I have introduced with three of our distinguished colleagues that would require United States businesses operating in China to adhere to internationally recognized labor standards. Its purpose is to ensure that the United States corporate presence in China promotes better working conditions and thereby contributes to political liberalization and respect for human rights inside that country. The bill's three original cosponsors, NANCY PELOSI, CHRIS SMITH, and GERALD B.H. SOLOMON, reflect the broad, bipartisan support for a tougher United States stance toward China.

When President Clinton decided last May to renew most-favored-nation trade status [MFN] for China and to delink human rights performance from trade benefits, I predicted that this action would not lay to rest this divisive issue, but only postpone our coming to terms with the brutal Chinese regime.

The recent crisis over China's blatant violation of United States intellectual property rights [IPR] proves my point, and demonstrates that it is not possible to compartmentalize our relations with a state that has a total disregard for the rule of law. We are foolish to believe that the same Chinese Government that rejects the entire corpus of international human rights law will dutifully uphold international trade agreements. The truth, as the IPR dispute so clearly shows, is that a government that disregards international law in one area is going to do so in any area where it perceives an interest in following its own rogue course. Thus, the Chinese routinely violate arms control and trade agreements.

Moreover, China's human rights performance has worsened since the President renewed MFN for China, as documented in State Department and Human Rights Watch/Asia reporting. Obviously, the Chinese Government feels that Washington will exact no price for its abysmal human rights record, and the continuing ruthless repression exposes the fallacy of the argument that trade provides an avenue for construction engagement with repressive regimes.

Nevertheless, as the trips to China of Secretaries Brown and O'Leary demonstrated, the United States business community is eager to pursue promising opportunities in China, and enhanced United States-Chinese commercial relations will no doubt greatly benefit both countries.

However, in the mad dash to get a piece of the action, let us at least ensure that United States companies do not inadvertently contribute to the maintenance of the intolerable status quo for hundreds of millions of Chinese workers. The foreign business community's ultimate value comes from its good example, not its mere presence. It must adhere to internationally recognized standards of labor law in order to be a catalyst of progress.

Therefore, Mr. Speaker, I am introducing legislation with my three distinguished colleagues that would require United States businesses operating in China to follow internationally recognized labor standards. This code of conduct is not burdensome or unreasonable. It does not impose heavy reporting requirements or advocate labor practices as stringent as those found in the United States, but its adoption by the United States business community would spur political liberalization in China by making the workplace a safer, more humane environment where coercion, repression, and intimidation have no role.

It is important for the Chinese Government, the American business community, and the administration to know that the Congress is serious about seeing progress on human rights in China. If voluntary action does not bring results, then binding legislation is required.

The Sullivan principles were a major catalyst for change in South Africa, and it is my strong feeling that these principles can play the same role in China.

If United States business truly wants to promote positive change in China, then adherence to this code of conduct offers an excellent vehicle for the implementation of that agenda without in any way harming United States competitiveness in the international marketplace. Demonstrating that the U.S. corporate community believes that good ethics and good business go hand-in-hand would send an unmistakable signal to the Chinese Government and provide powerful support to Chinese workers.

ACKNOWLEDGEMENT OF THE USAF AIR COMMANDO 50TH ANNIVERSARY

HON. JAY KIM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. KIM. Mr. Speaker, I rise today to express my sincere congratulations to the Air Commandos of World War II, which celebrated its 50th anniversary in October 1994. The Air Commandos were originally founded by Col. Phil Cochran, who was forever immortalized by Milton Caniff in his Terry and the Pirates cartoon as Steve Canyon.

This organization represents the heart and soul of what our Armed Forces are all about. Through unfaltering dedication and spirit, the men of the Air Commandos of World War II set the standard for today's U.S. Air Force [USAF] special operations units. Their fearless giving of themselves for the good of the United States during World War II is a testament to the intestinal fortitude they have displayed over these 50 years in keeping the memory of their fallen companions alive.

This dedication to protecting U.S. interests abroad, no matter what the cost, are best exemplified by the motto—Please be assured that we will go with your boys any place, any time, anywhere—which has become the motto

of the USAF special operations groups today. I extend a heart felt gratitude to these men for their efforts and hope that their tradition carries on for years to come.

TRIBUTE TO PRESIDENT MARC E. HALL AND COSUMNES RIVER COLLEGE

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. MATSUI. Mr. Speaker, I rise today to pay tribute to two Sacramento community assets: Cosumnes River College and the man who has led the college's remarkable growth and success, president Marc E. Hall. This year marks the 25th anniversary of Cosumnes River College and the end of Dr. Hall's tenure as president.

Cosumnes River College opened in 1970, in a storefront in south Sacramento. In the beginning, student enrollment was slightly over 2,000 and in the 25 years which have passed, the college has attracted an average semester enrollment of 9,000 students at their main campus alone.

Since its first year, the college has served more than 152,000 students, illustrating a growth which has necessitated the college's newly expanded El Dorado Center and the Folsom Lake Center.

During the last 25 years, the college's curriculum has expanded and contracted to reflect the region's job and economic markets. A statewide leader in partnerships, CRC has joined with other educational institutions and business and industry leaders such as Ford Motor Co., Sacramento Educational Cable Commission, PacWest Cable, Citizens Telecommunication and several allied health agencies, all in an effort to bring quality education to the region's students.

With the benefit of strong leadership, the college has become an active participant in community affairs and has led a movement in establishing educational goals for its service area.

An example of the college's success is the foodservice production and control program to the area in the 1989–90 school year. The program includes a special cooperative effort with the Sacramento Area Community Kitchen, training unemployed workers for careers in the foodservice industry while simultaneously preparing nutritious meals for the area's homeless shelters. This cooperative effort took 80 percent of the students enrolled in this special food preparation course off the public assistance rolls and put them to work in a variety of jobs. The college has implemented many other partnership programs, reflecting a model approach to serving both students, workers and employers in this region.

Three of the four presidents of CRC are still active in the local education and business communities. Oliver Durand, founding president, Vincent "Pete" Padilla, emeritus and Dr. Marc E. Hall, current president. All three were recently recognized by the college's foundation for their excellent leadership and commitment to education.

Dr. Hall, has chosen to close his tenure as president in June of this year and will return to the scene of his first love, the classroom. He will be sorely missed by the staff and the students who followed his leadership through the shared governance process, during one of the community's largest growth periods.

I ask my colleagues to join me in saluting the outstanding contributions Cosumnes River College has made to the region and also in thanking Dr. Hall for his remarkable leadership.

TRIBUTE TO TOGO TANAKA

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. WAXMAN. Mr. Speaker, I ask my colleagues to join me in saluting Mr. Togo Tanaka on the occasion of his receipt of the Spirit of Wellness Community Award from the Wellness Community in Santa Monica, CA.

As an active member of the Wellness Community Board of Directors, Mr. Tanaka has made a tremendous contribution to realizing the goal of the Wellness Community.

Togo Tanaka is one of the most prominent members of the large Los Angeles Japanese-American community. A political scientist by training, Mr. Tanaka has also served as a newspaper editor, publisher, and leading figure in the field of real estate. In addition, he served 10 years as a director of the Federal Reserve Bank of San Francisco and on the advisory council of the California World Trade Commission.

During World War II, like virtually every other individual of Japanese ancestry, Mr. Tanaka was interned at a remote rural relocation center. Tanaka, who is a native-born American citizen, has never been bitter about the great injustice he and others of Japanese ancestry suffered from the unconstitutional and unconscionable forced relocation program.

Despite Mr. Tanaka's busy professional life and strong commitment to his family, he has found the time and energy to become deeply involved in numerous philanthropies. Among those to which he is most dedicated are the Wellness Community, the Crippled Children's Society, the American Red Cross, and the Japanese Cultural and Community Center.

I ask you, Mr. Speaker, and all of our colleagues to congratulate Togo Tanaka and to wish him continued happiness, good health, and success in all future endeavors.

INTRODUCTION OF PIPELINE SAFETY LEGISLATION

HON. THOMAS E. PETRI

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. PETRI. Mr. Speaker, today, I am introducing legislation, at the request of the pipeline industry, to reauthorize our pipeline safety programs. This legislation represents the consensus view of both the natural gas and hazardous liquid pipeline industries on the future direction of pipeline safety programs and will be considered at a Surface Transportation Subcommittee hearing to be held next week.

TRIBUTE TO PHIL ZIMMERMAN

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. KAPTUR. Mr. Speaker, I rise today to commemorate the 100 years of living by one of our community's most endearing constituents, Mr. Phil Zimmerman of Toledo, OH. Mr. Zimmerman, born on March 16, 1895, married his wife Eva, 70 years ago. Together they have reared 3 daughters, 7 grandchildren, and 13 great-grandchildren, all of whom join our community in congratulating this centurion of a man on his 100th birthday.

One of the founding fathers of Toledo's Old Newsboys Goodfellow Association, Mr. Zimmerman serves now as the organization's honorary president, the only person ever to hold the post. A life member, he remains actively involved in its good works—providing scholarships to talented students and winter outerclothes to needy children—by serving as a cochairman of the finance committee.

Phil Zimmerman has been active in our community in other ways as well. He is a 32d-degree Mason, a Shriner, member of B'nai B'rith, and past president of the Fraternal Order of Eagles. He was a business leader as well and owned the Diamond Jewelry Co., and served as vice president of the Toledo Blueprint Co.

The actress Helen Hayes has said, "Old age is not something at which I have arrived reluctantly, it is something which I have achieved." His family, friends, and community honor and applaud Phil Zimmerman on his rare and remarkable achievement of a lifetime with 100 years and more.

SETTING RECORD STRAIGHT ON ALAR

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. GEJDENSON. Mr. Speaker, conventional wisdom now claims that the so-called alar scare was overblown, and that the chemical sprayed on apples posed no real threat to children, as had been reported on "60 Minutes" from a Natural Resources Defense Council study.

This mistaken impression that alar was never dangerous is sad testimony to the skillfulness of a highly financed disinformation campaign by the agricultural chemical industry.

Six years later, and with this false story fueling the debate to overturn current regulations, it's time to set the record straight.

On two occasions after the "60 Minutes" broadcast—in July 1991, and again in September 1992—further scientific studies prompted EPA to reaffirm alar as a probable human

carcinogen. EPA set a zero tolerance for alar, meaning no foods can contain any residues of the chemical whatsoever.

These findings were reached after EPA's scientific advisory board, under the Bush administration, considered further animal tumor data. This data showed that alar was even more dangerous than originally believed. In apple juice and other processed foods, the studies show alar breaks down into nitrosamines—a highly potent carcinogen according to all mainstream, responsible science.

Indeed EPA staff had been pressing to ban alar since 1985, under the Reagan administration, because of the scientific evidence. Massachusetts and New York had already banned alar long before the NRDC report, and the American Academy of Pediatrics had urged such a ban at the Federal level.

Final vindication came in 1993 when the National Academy of Sciences released a landmark report affirming the basic premise of NRDC's study—that infants and young children are more susceptible to cancer causing agents in food. Yet to date no Federal exposure standards have been recalculated to compensate for the increased sensitivity of children.

Said the chairman of the National Academy of Sciences report, Dr. Philip Landrigan, "NRDC was absolutely on the right track when they excoriated the regulatory agencies for having allowed a toxic material such as alar to stay on the market for 25 years."

Meanwhile, the apple industry has prospered without alar, earning record revenues. The banning of this chemical based on real, sound, mainstream, nonideological science in the long run hurt this industry not one bit.

By distorting the facts and blurring the real issues, I'm afraid some of my colleagues aim to condition the public to reject future reports of pesticides hazards as invalid, as another alar. Yet the record proves alar was dangerous to children, and the Republican administration of George Bush was absolutely correct to remove it from all foods altogether.

JACK SCARANGELLA: A PUBLIC SERVANT WHO WENT THE EXTRA MILE

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mrs. LOWEY. Mr. Speaker, I rise today to pay tribute to Jack Scarangella—a resident of the 18th Congressional District of New York—for his enduring commitment to our Nation's senior citizens, and for his extraordinary service to the best traditions of public leadership. On January 20, Jack Scarangella retired as the District Manager of the Social Security Administration for the New Rochelle, NY area, which I proudly represent. Jack has dedicated the last 46 years of his life to Government service, overseeing tens of thousands of Social Security claims each year. He began his career with Social Security as a claims examiner in 1951, and 5 years later became the New Rochelle District Manager, a post he then held until the day he retired.

Jack's inspired leadership, creative decision making, and insistence on reevaluating the way the Social Security Administration conducts business have improved the efficiency of the Social Security Administration and helped enhance service to Social Security beneficiaries. He has been recognized for the improvements in operational procedures he has helped implement over the years through the receipt of numerous awards for performance and service. The fact that Jack received another such award just last year is testament to the fact that he was as ambitious and dedicated at the end of his career as he was when he first joined the Social Security Administration almost five decades earlier.

Jack was not content to help only those recipients who came through his doors or whose problems crossed his desk. That is why he enlisted the support of prominent citizens and local celebrities in information campaigns, hosted a weekly radio show on WVOX featuring questions and answers on topical agency issues, and hosted a community access show on TCI cable. Initiatives and public forums such as these have allowed Jack to expand public knowledge and, in turn, assist countless older Americans and their families with the Social Security system.

Mr. Speaker, these years of service alone would have been enough to merit recognition. Jack Scarangella, however, has been more than a dedicated worker. Jack has felt committed to his entire community, not just those in need of assistance with Social Security. He has been active in civic life through his work with Westchester 2000, the Chamber of Commerce, the Boys' and Girls' Club, the American Heart Association, Legal Awareness of Westchester, and several other local service organizations. I am confident that his service will continue for years to come.

Mr. Speaker, on behalf of the friends, colleagues, admirers, and family of Jack Scarangella, I hereby express heartfelt appreciation for his years of service and recognize the joyous occasion of his retirement.

IN RECOGNITION OF DR. MIKE MOSES

HON. LARRY COMBEST

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. COMBEST. Mr. Speaker, I rise today to pay tribute to a man who has for many years devoted himself and his talents to the community of Lubbock, TX. Dr. Mike Moses is now in his sixth year as superintendent of the Lubbock Independent School District.

Recently, Dr. Moses was selected by Governor George W. Bush to become the State commissioner of education. This prestigious appointment is certainly deserved by Dr. Moses for his efforts, not the least of which is that his management expertise and business abilities kept LISD financially viable after he inherited an almost bankrupt district in 1989.

Dr. Moses was named "Educator of the Month" in the July/August 1994 issue of Texas School Business. In the summer of 1993 he served as a member of the Select Committee for Sunset of Texas Education Agency, and was awarded the first ever "Good Scout Award" in December, 1993.

In addition to his tireless efforts to strive for better educational opportunities for our young people, he is a Rotarian and a member of the First United Methodist Church. He is also involved in the chamber of commerce, Boy Scouts, and United Way.

Mr. Speaker, it is a honor for me to recognize such an involved and devoted citizen of west Texas. I salute Dr. Mike Moses for willingness to freely give of his own time, energy, and talents. He has positively affected the lives of many in Lubbock, TX, and has dedicated himself and his life to a better education for our young people.

LIABILITY LAW REFORM

HON. BRIAN P. BILBRAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. BILBRAY. Mr. Speaker, I submit the following article from the Washington Post because it encapsulates a unique perspective that I believe I bring to the debate we are having today on product liability reform.

[From the Washington Post, Mar. 7, 1995]

GETTING PERSONAL ON PRODUCT LIABILITY—TWO LAWMAKERS' OPPOSING VIEWS STEM FROM THEIR OWN PAINFUL EXPERIENCES

(By Caroline E. Mayer)

To Rep. Brian P. Bilbray (R-Calif.), product liability legislation is "a personal blood and guts issue"—a measure needed to protect women and children who otherwise wouldn't be able to get the drugs they need.

"It's actual flesh and blood that we're talking about," said the freshman lawmaker, who saw his wife go into shock during a pregnancy 10 years ago because a drug she needed to help her deal with severe morning sickness had been pulled off the market by its manufacturer for fear of product liability suits.

But to Rep. Patsy T. Mink (D-Hawaii), legislative efforts to make it harder to sue for damages from defective products is "a great offense" to women and children, especially DES mothers—among them herself—who, by taking a drug thought to prevent miscarriages, exposed her child to a greater risk of cancer.

"Having had the personal experience, I want to make sure the people who are voting for the bill will understand that justice is being thwarted for millions of Americans," said Mink, who collected a $250,000 settlement from a lawsuit over the medication.

It should be no surprise that these two lawmakers—on different sides of the political aisle—have divergent views about the product liability legislation before the House this week. But it is the personal experience and intensity each brings to the debate that makes their positions stand out in the battle to overhaul the nation's tort laws.

Mink's vociferous opposition stems from her use of DES, diesthylstilbestrol, when she was pregnant 43 years ago. "Knowing the agonies that women in other kinds of product liability lawsuits went through, I have a special responsibility to speak out," she said.

Approved by the Food and Drug Administration in 1947 to prevent miscarriages, DES

was discovered, decades later, to cause significant damage to the babies born to mothers who used DES. In some cases, DES children have severely deformed sexual organs, cannot have children, have impaired immune systems or a high risk of developing a rare from of cancer.

Mink was given DES as part of an experiment testing the drug's effectiveness, but did not know it until 25 years later, when she received a "blunt letter" from the university where she had been treated. The university asked if she or her daughter had developed cancer.

Mink sued the university and company that supplied the DES, winning a $250,000 settlement. In addition, the university promised to care for all DES daughters of mothers it treated at no cost if the daughters developed a certain type of cancer of the vagina or cervix at any time before they are 70.

"Under the legislation under consideration, it is unlikely that any DES mother or child would have been able to recover any damages," Mink said.

Bilbray has not been as eager to discuss his experience. "It's not something I prefer to talk about." he said after a House Commerce Committee meeting last month. But that's what Bilbray did when the committee drafted its version of the product liability bill.

"Women and children are dying as a result of existing laws," Bilbray told his colleagues at the drafting session. "Products that are needed are being pulled off the shelves because of lawsuits." Some people may think lawsuits may make all the pain better, he said. But, he added, "please do not think there's any amount of money that's ever going to pay a parent back by never being able to hug their child."

"Listening to all these members stand up and talk about how consumer products have done all these terrible things, it was like a knife cutting into me * * * Sometimes you just have to stand up and scream," he said in an interview afterward.

KEY FACETS OF THE LEGISLATION

Product liability legislation to be considered by the House would:

Preempt state laws and set a national standard for product liability lawsuits.

Bar any lawsuit for damage incurred from products more than 15 years old unless they cause a chronic illness, such as cancer caused by asbestos or DES.

Limit punitive damages to the greater of $250,000 or three times the economic damages.

Require "clear and convincing evidence" that a manufacturer either intended to cause harm or acted with conscious, flagrant indifference for punitive damages.

Bar damages if the person bringing the suit was intoxicated or under the influence of drugs when the harm occurred and if alcohol or drug use was the principal cause of the accident.

Make retailers liable only if they engaged in intentional wrongdoing, negligence or if the product failed to comply with an express warranty made by the retailer. The retailer also would be liable if the manufacturer went bankrupt or could not be sued in the claimant's state.

Sanction attorneys for filing frivolous pleadings in product liability actions.

Separate legislation would require the loser of any lawsuit to pay the winner's legal costs if the loser rejected a settlement before the jury verdict. Even if a jury found in favor of the person bringing the suit, that person could still be required to pay the other side's legal fees if the jury award is less than a rejected settlement.

Ten years ago, Bilbray's wife had to go into the intensive care unit "when she couldn't get access to the drug she desperately need," he said.

In three earlier pregnancies in a previous marriage, Karen Bilbray had taken a drug called Bendectin to control severe morning sickness. But in 1984, when she was pregnant with Bilbray's child, Bendectin was no longer available.

The manufacturer, Merrell Dow Pharmaceuticals Inc., had removed the drug from the market after several women successfully sued the company, alleging that the drug produced birth deformities. Even though scientific data never proved it was harmful, Merrell stopped selling the drug.

"My wife was not allowed to make a decision on what she wanted to put into her body; it was made by a lawyer suing, maybe well-intentioned but misguided and very critical to her well-being," Bilbray said.

Without Bendectin, Bilbray's wife became so sick she went into shock, he said. "If it wasn't for a doctor willing to take the risk [and give her some Bendectin], I probably would have lost her." A son, Brian, was born several months later, to live only three months before he died of crib death. Bilbray is convinced that the trauma of his wife's first three months of pregnancy contributed to the child's death.

"People are going to suffer no matter what you do" to reform the civil justice system, Bilbray said. But Congress "needs to be more sensitive to the damage that these lawsuits create by denying benefits" to people who may need them.

TRIBUTE TO WILLIAM MEEHAN

HON. ROBERT T. MATSUI

OF CALIFORNIA

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. MATSUI. Mr. Speaker, we rise today to pay tribute to Mr. William Meehan, a native Californian who has devoted his professional career to the preservation and growth of labor's health in this great State.

In the many years Mr. Meehan has been a major force in the labor realm, both of our offices have relied on his expertise and counsel. We join with the scores of colleagues who salute the outstanding leadership you have given to the Sacramento-Sierra's Building and Construction Trades Council and to the Sacramento Central Labor Council.

In an era of shrinking resources, Mr. Meehan has been one of Sacramento's great defenders, ensuring jobs for thousands of men and women throughout the region.

Not only has Mr. Meehan been an outstanding defender of the labor force, but we would be remiss in not commending his steadfast support of this entire community. The list of political, charitable, and labor related organizations with which he has aligned himself reflects the great character all leaders strive to achieve. An abbreviated list of organizations who are indebted to his leadership and hard work include the Greater Sacramento Area Plan, Labor and Business Alliance, Sacramento Water Intelligently Managed, Private Industry Council, Auburn Dam Council, Friends of Light Rail, American Red Cross, Sacramento Employment Training Agency, Harps, National Toxics Coalition, United Way, Hundred Dollar Club, Sacramento Metropolitan Chamber of Commerce, and the Sacramento Fire Board.

Truly, Sacramento is a better place to work and live thanks to what we hope is only the first half of Mr. Meehan's career. As he begins to undertake his latest challenge for the Painter's International, we ask our colleagues to join us in wishing him continued happiness and success.

HOPALONG CASSIDY FAN CLUB PROCLAMATION—THE CITY OF CAMBRIDGE IN THE STATE OF OHIO

HON. ROBERT W. NEY

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. NEY. Mr. Speaker, I submit the following proclamation from the city of Cambridge in the State of Ohio.

Whereas, the Hopalong Cassidy Fan Club has contributed untold volunteer hours in building character, citizenship, and leadership in this community; and,

Whereas, the Hopalong Cassidy Fan Club is celebrating the 100th birthday of Hopalong Cassidy on June 5, 1995; and,

Whereas, members have made in kind contributions of service, financial contribution to the Cambridge area, contribution to the Park School, and to other important needs of the community; and,

Whereas, the local Hopalong Cassidy Fan Club has extended the interest of Hopalong Cassidy within this community; and,

Whereas, the members of schools, churches, service clubs, union organizations, and others have been members of the Hopalong Cassidy Fan Club; and,

Whereas, the city of Cambridge and all the surrounding areas of Ohio are better places to live because of Cambridge's Hopalong Cassidy Fan Club, we join in the celebration of the 100th birthday of Hopalong Cassidy on the fifth day of June in 1995.

TRIBUTE TO THE DISTINGUISHED ELECTED WOMEN OFFICIALS IN EDUCATION OF CALIFORNIA'S 14TH CONGRESSIONAL DISTRICT

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. ESHOO. Mr. Speaker, I rise today during National Women's History Month to salute the remarkable women of California's 14th Congressional District who have been entrusted with the honor and sacred duty of educating our youth.

This year, as we celebrate the 75th anniversary of women's suffrage, it is fitting that we honor the women who devote their time and talents to preserving and enhancing our public education system. The efforts and public service of these remarkable women provide our district with extraordinary leadership, and our

excellent school systems benefit from their unique ideas and skills. While we take time during this month to commemorate historic women and their achievements, we also take this opportunity to honor the contributions women in education are currently making to our communities.

The 14th Congressional District's distinguished women elected officials in education are: Boardmember Helen Hausman of the San Mateo County Community College District; Boardmembers Mary Mason, Judith Moss and Dolly Sandoval of the Foothill/De Anza Community College District; Boardmembers Susan Alvaro and Beverly Willis-Gerard of the San Mateo County Board of Education; Boardmembers Maria Ferrer, Anna Kurze and Andrea Leiderman of Santa Clara County Board of Education; Boardmembers Nancy Gisko, Francesca Karpel and Nancy Kehl of the Belmont Elementary School District; Boardmembers Toni Foster, Mary Freeman-Dove, Ruth Palmer and Marina Stariha of the Cabrillo Unified School District; Boardmembers Debbie Byron, Sandra James and Emily Lee Kelley of the Cupertino Union School District; Boardmember Nancy Newton of the Fremont Union High School District; Boardmembers Tracey Demma, Janet Gomes-Simms, Erika Perloff and Connie Sarabia of the La Honda-Pescadero Unified School District; Boardmembers Kerry Bouchier and Elyce Haskell of the Las Lomitas Elementary School District; Boardmembers Gerri Carlton and Terri Sachs of the Los Altos School District; Boardmembers Karen Canty, Margaret Draper and Valerie Rynne of the Menlo Park City Elementary School District; Boardmembers Donnal Larson, Ann Lewis and Leslie Pantling of the Montebello School District; Boardmembers Marta Clavero-Pamilla, Rose Marie Filicetti, Nancy Mucha and Susan Ware of the Mountain View School District; Boardmembers Lynn Alvarado, Ann Baker, Sue Graham and Judy Hanneman of the Mountain View-Los Altos Union High School District; Boardmembers Julie Jerome, Diane Reklis and Susie Richardson of the Palo Alto Unified School District; Boardmembers Holly Meyers, Kathryn Reavis and Pat Steuer of the Portola Valley Elementary District; Boardmembers Lois Frontino, Donna Rutherford and Keisha Williams of the Revenswood City Elementary School District; Boardmembers Terri S. Bailard, Patricia Brown and Magda Gonzalez-Hierro of the Redwood City Elementary School District; Boardmembers Joy L. Ferrario and Beth Hunkapillar of the San Carlos Elementary School District; Boardmembers Beverly Scott, Allene Seiling and Sarah Stewart of the Sequoia Union High School District; Boardmembers Linda Kilian, Pamela Kittler, Ellen McHenry and Margaret Quillinan of the Sunnyvale School District; Boardmembers Fran Kruss and Sanda Jo Spiegel of the Whisman School District; and Boardmembers Heidi Brown, Ann Nolan and Abby Wilder of the Woodside Elementary School District. Appointed leaders include Colleen Wilcox, Superintendent of the Santa Clara County Office of Education, Martha Kanter, President of DeAnza College, and Bernadine Fong, President of Foothill College.

Mr. Speaker, I ask my colleagues to join me in honoring these remarkable women whose leadership, expertise and commitment have made California's 14th Congressional District a wonderful place to live and learn. These great leaders are fitting representatives of the many women who make history every day and are the shapers of the young women who will make history in the future.

H.R. 510, THE MISCLASSIFICATION OF EMPLOYEES ACT

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. LANTOS. Mr. Speaker, I rise today to say a few words about the job classification of workers, and to urge my colleagues to support H.R. 510, the Misclassification of Employees Act.

Small business men and women have contacted many of us to explain some of the important reasons why Congress should take another look at how workers are classified for Federal income and employment tax purposes, as well as for many non-tax purposes. We know that confusion with employee classification rules can lead to costly disputes with the IRS with devastating effects on small businesses. These costs include, among others, assessments of back taxes, interest and penalties for businesses which misclassify workers as independent contractors, as well as the legal costs involved with coming into compliance with or defending against an IRS audit.

There are other issues relating to the misclassification of workers that arise out of the current procedures for determining who is an employee and who is an independent contractor, including the effect of misclassification on the unsuspecting worker, the effect of misclassification on the honest businessman trying to compete with a competitor who has misclassified his workers, and the effect of misclassification on the Federal budget deficit. H.R. 510 would remedy some of the unintended effects that arise out of the current procedures for determining who is an employee and who is an independent contractor.

I would like to make clear from the outset, however, that I agree with and recognize the appropriate and valuable roles of those who work as independent contractors. This country has benefited greatly from the spirit and independence of the self-employed individual and I do not think there is anyone who wants to stifle the creativity of these individuals. It is the misuse of the independent contractor status and its serious adverse effect on both employer and worker that concerns me.

My colleague, CHRIS SHAYS, and I became interested in the classification of workers several years ago when we served together on the Employment and Housing Subcommittee of the Government Operations Committee. We found that the current means of determining employment status has had several negative effects: First, it results in similarly situated employers being treated very differently under tax law; second, it allows—and actually encourages—businesses to undercut competitors through unfair practices; third, it leaves some workers exploited and unprotected; and fourth, it deprives the Federal Government of significant revenue.

Under current law, workers are classified as either employees or independent contractors in one of three ways. First, some workers are explicitly categorized as either employees or independent contractors by statute. Second, workers may be classified as independent contractors under statutory "safe harbors" enacted in section 530 of the Revenue Act of 1978. Third, if a worker is not classified statutorily, and cannot be classified under the statutory "safe harbor," then the worker is classified by applying a very subjective common law test. Most workers fall under this third category.

Current law allows some employers to misclassify workers if they have a "reasonable basis" for classifying employees as independent contractors. Thus, an employer may rely upon a prior IRS audit, including audits not made for employment tax purposes, in holding a reasonable basis for classifying workers. It makes no sense to permit the wrongful classification of workers based on a previous audit which may have had nothing to do with the issue of worker classification. Our legislation eliminates the "safe harbor" provisions which allow the misclassification of employees to continue. We thus restore a level playing field and eliminate the unfair competitive advantages which arise due to the misclassification of workers.

Because the common law test is extremely subjective, employers have trouble in properly determining worker classification, and revenue agents often classify workers differently even where the underlying circumstances of their employment are the same. Since a large part of the misclassification of workers is due to a lack of understanding of the laws, clearer rulings and definitions will eliminate a tremendous amount of uncertainty in this area. Our legislation eliminates the restrictions on the IRS to draft regulations and rulings on the employment status of workers for tax purposes.

Employers who have unintentionally misclassified workers should be given the incentive to come into compliance. Therefore, our legislation offers a 1-year amnesty to employers who have misclassified workers on the basis of a good faith interpretation of common law or of section 503. This provision removes the devastating possibility of large assessments for back taxes, interest and penalties and insures compliance in the future.

Misclassification can have a devastating effect on the unsuspecting worker. As a contractor, he or she may receive a higher take-home pay and may be allowed to deduct more business expenses from income taxes. But the loss of financial benefits and of the many protections which are provided to employees can be catastrophic in cases of illness, unemployment and retirement. For example, there is no unemployment compensation for the independent contractor to fall back on between jobs. Health insurance is an individual responsibility and is usually far more costly than an employer's group policy. In the case of work-related injury or illness, there is no worker's compensation available. Our legislation would require prime contractors to notify legitimate independent contractors of all their tax obligations and other statutory rights and protections.

Mr. Speaker, our investigation found that the economic incentives for businesses to misclassify workers as independent contractors are huge. An employer who misclassifies a worker as an independent contractor escapes many obligations, including paying social security taxes, unemployment taxes and workers compensation insurance, withholding income taxes and providing benefits such as vacation, sick and family leave, health and life insurance, pensions, et cetera. Most employers are honest, but the law abiding employer is put at a serious disadvantage since he or she cannot compete on a level playing field with those who illegally cut their labor costs. Law abiding employers will not be able to compete fairly until we provide more clear, objective standards by which businesses and the Government can determine whether an individual is an employee or an independent contractor.

Lastly, Mr. Speaker, billions of dollars in Federal and State tax revenues are being lost as a result of the intentional misclassification of workers. This is one of the few remaining areas where we can help balance the Federal budget deficit without further cutting Government services or levying new taxes. A recent Coopers and Lybrand study found that at least $35 billion in legitimate tax revenue over the next 9 years will be lost by the Federal Government due to the misclassification of employees. At a time when critical services are on the chopping block, we can no longer allow this waste and abuse to continue. We must take steps to curb the continued misclassification of employees.

H.R. 10

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. HASTINGS. Mr. Speaker, H.R. 10 will strip American citizens of their ability to hold wrongdoers accountable and, when necessary, to punish reckless or other outrageous behavior on the part of manufacturers of dangerous products.

There is no explosion in punitive damages claims. In fact, such claims are extremely rare. In one comprehensive study conducted by the U.S. Supreme Court, only 355 punitive damage awards in product liability cases have been awarded over the last 25 years, and a number of those involved asbestos.

Mr. Speaker, Americans would be much worse off if they were unable to hold wrongdoers accountable. Punitive damages make Americans safer and have removed from the market products like flammable children's pajamas, asbestos, and the Dalkon shield. H.R. 10 is unwise and unnecessary.

TRIBUTE TO THE DISTINGUISHED WOMEN ELECTED OFFICIALS OF CALIFORNIA'S 14TH CONGRESSIONAL DISTRICT

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. ESHOO. Mr. Speaker, I rise today during National Women's History Month to salute the remarkable women of California's 14th Congressional District who have been elected to govern it.

This year, as we celebrate the 75th anniversary of women's suffrage, it is fitting that we honor those women who devote their time and talents to local and State government. The efforts and public service of these remarkable women provide our district with extraordinary leadership. While we take time during this month to commemorate historic women and their achievements, we also take this opportunity to honor the contributions women in government are currently making to our communities.

Our region is blessed with superbly capable women leaders. These distinguished women are: State Assemblywoman Jackie Speier; Mary Griffin of the San Mateo County Board of Supervisors; Blanca Alvarado and Dianne McKenna of the Santa Clara County Board of Supervisors; city council members Nanette Chapman and Mayor Dianne Fisher of Atherton; Nancy Levitt, Pam Rianda, and Mayor Adele Della Santina of Belmont; Barbara Koppel and Lauralee Sorenson of Cupertino; Mayor Rose Jacobs Gibson, Myrtle Walker, and Sharifa Wilson of East Palo Alto; Mayor Naomi Patridge and Deborah Ruddock of Half Moon Bay; Patricia Williams and Margaret Bruno of Los Altos; Toni Casey and Mayor Elayne Dauber of Los Altos Hills; Bernie Nevin of Menlo Park; Susan Ayers, Suzanne Hayes-Kane, and Angela Meyer of the Midcoast Community Advisory Council; Dena Bonnell, Mayor Patricia Figueroa, and Maryce Freelen of Mountain View; Liz Kniss, Jean McCown, Micki Schneider, and Lainie Wheeler of Palo Alto; Beverly Fields, Maeva Neale, and Meredith Reynolds of the Pescadero Municipal Advisory Council; Nancy Vian of Portola Valley; Judy Buchan, Mayor Daniela Gasparini, Georgia LaBerge, Diane Howard, and Janet Steinfeld of Redwood City; Sally Mitchell of San Carlos; Robin Parker, Frances Rowe, and Mayor Barbara Waldman of Sunnyvale; and Susan Crocker, Carol Fisch, and Barbara Seitle of Woodside.

Mr. Speaker, I ask my colleagues to join me in saluting these remarkable women and the extraordinary contributions they are making to their communities and our country. These gifted leaders are fitting representatives of the many women who make history every day, and their efforts on behalf of the people of California's 14th Congressional District are invaluable and appreciated by all.

THE HEALTH CARE LIABILITY REFORM ACT OF 1995

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. STUMP. Mr. Speaker, today I am introducing the Health Care Liability Reform Act to establish fundamental tort system reforms.

This legislation will: set a $250,000 cap on noneconomic and punitive damages; limit attorneys fees to 25 percent of the first $100,000 and reduce the allowable percentage as the award increases; eliminate the collateral source rule that allows for double recovery; abolish joint and several liability, so only defendants who are actually at fault are liable; require periodic payment of damages over $50,000; establish a 1 year reasonable discovery rule and 3 year statute of limitation with special exceptions for minors; and require pretrial dispute resolution to encourage reasonable settlement.

Our current medical malpractice system is not effective in compensating injured individuals or at improving the quality of health care. It is a system with powerful incentives for wasteful spending. Plaintiffs are allowed to sue even if the facts do not merit a lawsuit and cash payments of 3 to 4 times claimants' medical bills are awarded. The median verdict in medical liability claims, according to a Jury Verdict Research report jumped by almost $200,000 in one year from an all time high in 1991 of $450,000 to $646,487 in 1992. The General Accounting Office reported that over half of total health care liability costs are spent defending against claims that result in no payment. A RAND Corp. study found that 57 percent of the money spent in health care liability litigation does not reach the injured patient.

Physicians and hospitals are forced to provide care, not for the well-being of the patient, but to protect themselves from lawsuits. Our physicians are the best trained and equipped, yet they are also the most often sued. Claims against doctors rose form 2-per-100 in the 1960's to 16-per-100 in the late 1980's. Physicians fearing malpractice suits are increasingly opting out of high-risk specialties and medicine altogether. Those hurt most are disadvantaged pregnant women, rural communities and senior citizens.

Medical malpractice liability adds at least $15 billion a year to the cost of health care, according to a recent study by the Competitiveness Center of the Hudson Institute. It is driving up the cost of treatments, services, medical devices and pharmaceuticals and inhibits the research and development of new products. It is a detriment to patients, providers and taxpayers. If we allow this litigation explosion to continue unrestrained, any effort to bring down health care costs and increase access to care will surely fail.

MURDER OF TWO AMERICAN DIPLOMATS IN PAKISTAN LATEST EXAMPLE OF LAWLESSNESS IN KARACHI

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. PALLONE. Mr. Speaker, I call to the attention of my colleagues an article in today's Washington Times entitled "Blood on Karachi Streets Flows From Multiple Feuds." The article, written by John Stackhouse, discussed how Pakistan's largest city has degenerated into a lawless urban battlefield where innocent citizens are killed while the government and the police stand by idly. The latest victims of this sectarian and religious bloodshed were two American diplomatic employees who were brutally murdered yesterday by masked gunmen who ambushed their consular van in broad daylight.

Mr. Speaker, Pakistan for many years has been at the center of terrorism. Islamic militants have operated training camps, where young men have been trained and violence has been exported to many countries, including to India, Egypt, Israel and the United States. Pakistan was the country where those accused of the World Trade Center bombings were recruited and trained. Pakistan was the country where the terrorist who killed five people in front of the CIA fled to. Now, Pakistan has shown that it cannot protect U.S. diplomatic personnel on their way to work in that nation's largest city.

Mr. Speaker, I urge my colleagues to read the Washington Times article. It provides an excellent summary of the reasons behind Karachi's fall into the abyss of lawlessness, violence and terrorism.

I join with all my colleagues in this body, and all Americans, in expressing my deepest sympathies to the families of our diplomats who served their country with great distinction and courage.

BLOOD ON KARACHI STREETS FLOWS FROM MULTIPLE FEUDS POLITICS, RELIGION, ETHNICITY FUEL VIOLENCE

(By John Stackhouse)

KARACHI, PAKISTAN—With martyrs, guns and killing sprees, Karachi is no longer simply Pakistan's biggest city and commercial capital. It is a city at war.

The two American diplomatic workers gunned down yesterday were among 164 persons killed in Karachi in the past month in a spiral of violence that is a complex swirl of political, religious, ethnic and criminal currents.

A recent attack on two mosques has pitted the city's Shi'ite and Sunni Muslim sects against each other. Most of the fighting, however, has been between the two main factions of the Muhajir Qaumi Movement, Karachi's leading political force, which represents Urdu-speaking migrants, or "muhajirs," originally from India.

Many fear that if the two battles—one sectarian, the other ethnic—overlap, Karachi will slide toward anarchy.

Already mosques, normally symbols of peace and security, are bolted shut with steel doors, opened only long enough for worshipers to pass weapons checks. At night, the streets have mere trickles of traffic. Many residents are even talking of not celebrating the coming Muslim festival of Eid.

Day after day, in a city once renowned for its seaside tranquility and cosmopolitan night life, the killings continue, each seeming to set a new standard for senselessness.

In December, seven artisans were shot dead in their shop as they crafted lacework. The same month, on one of Karachi's main roads, seven persons were burned to death in a bus in the early evening. Last week, a passing motorist sprayed bullets in a tailor's shop, killing three persons.

Much of the city's crisis has been laid at the feet of Karachi's police force, which has been both ineffectual and, in some places, linked to criminal gangs.

Although the army ruled the streets of Karachi from 1992 to 1994 in a special operation against urban violence, it pulled out in December—and 437 persons have been killed since.

"I would advise the government to go to the extent of disarming the police," said Nizam Haji, a local businessman who heads a liaison committee between police and civilians. "The police have gone rotten in Karachi. Totally corrupt, incompetent and politicized."

Last month, gunmen opened fire on a crowd across the street from one of Karachi's main police stations, killing 11. Despite several police near the scene, no one fired at the assailants or gave chase. Nor have there been any arrests for the attack, although five police officers were charged with dereliction of duty.

With little law and no order, drug lords and criminal gangs also have taken to Karachi's streets, launching robberies, extortion and retribution killings.

In Pakistan's most international city, the rise of sectarian violence has raised concern about foreign involvement, perhaps even proxy battles.

Sherry Rheman, managing editor of the Herald, Pakistan's leading newsmagazine, said that Shi'ite factions in the city appear to be backed by Iran, while Sunni gunmen receive money, weapons and training from Saudi Arabia.

There also are concerns that official agencies, perhaps the government itself, has sponsored the terror. Many observers believe the army, during its rule in Karachi, armed and trained a new muhajir faction to launch a fratricidal war among the migrant population.

The new faction is now seen to be supported by the country's infamous intelligence agencies, the same bodies that backed the Afghan mujahideen in the 1980s.

For any Pakistani government, support of the muhajirs is a key to political survival. With about half of Karachi's 10 million people, they hold sway over the country's biggest economic center, as well as the influential southern province of Sindh.

Despite their numbers, though, the muhajirs feel they are marginalized by Sindh's powerful rural elite, which includes the Bhutto family.

"These 2 percent of the population control 98 percent of the country," said Shoaib Bokhari, a muhajir member of the Sindh assembly.

Mr. Bokhari did not deny the muhajir ambition for a new province of Karachi. The city now is administered by the Sindh government, and while the federal government relies heavily on Karachi and its port for tax revenue, it spends little on the thriving commercial center.

The Sindh government also keeps 15 percent of Karachi's property tax, the city's main source of revenue, as a service charge for collecting it. And the province reserves the majority of government jobs, on a quota system, for rural Sindhis, who tend to be less educated than the muhajirs.

While the muhajirs once controlled Karachi's city council, their government was dismissed in 1992. The party's top officials either were arrested or went underground, and the muhajir leader fled to London, where he lives in self-exile.

When the army withdrew from Karachi in December, Prime Minister Benazir Bhutto appointed her helicopter pilot as city administrator and stacked the rest of the city council with members of her Pakistan People's Party.

U.S. ASSISTANCE FOR POSSIBLE NATO EFFORT TO HELP UNPROFOR WITHDRAW FROM BOSNIA AND CROATIA

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. HAMILTON. Mr. Speaker, last year President Clinton made the commitment to deploy United States forces to assist in a NATO effort to withdraw U.N. peacekeeping troops from Bosnia if this becomes necessary. On March 31, we are approaching a deadline imposed by the Government of Croatia for the beginning of the withdrawal of UNPROFOR from Croatia, to be completed by the end of June. The President still has not committed United States forces to assist in a possible withdrawal from Croatia, in part so as not to prejudice delicate on-going negotiations with the Croatian government.

Given the seriousness and the implications of the President's commitment of United States forces for these possible missions and the dangerous situation in Croatia, I wrote to Secretary Christopher in February setting forth my concerns. I received a response to my letter today. I am including both in the RECORD in order that my colleagues can be informed about the important, serious issues before us.

In the response to my letter Assistant Secretary of State for Legislative Affairs, Wendy Sherman, emphasizes that in assisting the possible pull-out of UNPROFOR, "NATO has no intention of engaging in offensive combat in Bosnia and/or Croatia, or of remaining in the region following the UNPROFOR pull-out."

Assistant Secretary Sherman also stresses that to give our diplomatic efforts a chance to succeed, the administration is not yet making a public case for assistance with the UNPROFOR withdrawal from Croatia. But if there is no alternative, the President will explain to the American people what is at stake, which above all, is "our collective security, as exemplified by mutual commitment to Allies."

In testimony today before the International Relations Committee, Assistant Secretary of State for European Affairs, Richard Holbrooke, gave assurances that United States troops, if they are ever deployed in Bosnia or Croatia, will do so only to help UNPROFOR troops leave, period.

The exchange of letters follows:

COMMITTEE ON
INTERNATIONAL RELATIONS,
Washington, DC, February 22, 1995.

HON. WARREN CHRISTOPHER,
Secretary of State, Department of State, Washington, DC.

DEAR MR. SECRETARY: On January 3, I wrote to you regarding the President's decision in principle to commit U.S. ground forces to a future NATO-led operation to support UNPROFOR withdrawal from Bosnia. I appreciated your reply of January 19.

I am writing again because my policy and process concerns about this decision persist. Indeed, they have been sharpened, as a result of: (1) the increasingly fragile situation in Bosnia; (2) information provided to the Committee that the first contingency steps to implement a withdrawal of UNPROFOR from Bosnia are now going forward; and (3) the decision of the Croatian government to terminate the mandate of UNPROFOR in Croatia after March 31, 1995.

I would like to ask a number of questions about U.S. policy:

1. Does the President's commitment to assist in the withdrawal of UNPROFOR from Bosnia extend to a withdrawal of UNPROFOR from Croatia as well?

If such a commitment has not been made, is it under active consideration at this time?

What would be the U.S. troop and cost requirements of such an additional commitment?

2. How would a prior withdrawal of UNPROFOR from Croatia complicate an UNPROFOR withdrawal from Bosnia?

How would an UNPROFOR withdrawal from Croatia change the U.S. troop, cost and logistics requirements of a NATO-led operation to support UNPROFOR withdrawal from Bosnia?

3. How does the possibility of renewed fighting in both Bosnia and Croatia affect your estimates of the U.S. troop and cost requirements of a NATO-led operation to support UNPROFOR withdrawal?

If fighting resumes, do you believe that U.S. forces participating in a NATO-led withdrawal of UNPROFOR will be able to keep out of the conflict?

4. I appreciate the Department of State's reply of January 19th, "that the Administration has no intention of keeping U.S. ground forces in Bosnia following a withdrawal operation." I agree with that policy limitation, but I remain concerned about the strong pressures on U.S. ground forces—during and in the aftermath of an UNPROFOR withdrawal—to intervene in the conflict:

To provide humanitarian assistance;

To protect civilian populations; or

To respond to military provocations by parties to the conflict.

How do you address each of these issues, from the standpoint of keeping U.S. forces focused on their mission, and preventing mission creep?

I also want to reiterate my concern, which I know you share, that a commitment to put U.S. ground troops in harm's way is the most serious undertaking a President can make.

To my knowledge, the President has yet to make a public case for sending U.S. ground forces to assist in UNPROFOR withdrawal from Bosnia. Unless or until the President makes the case directly to the American people, I believe there will be little support for his decision in the Congress or among the public at large. I strongly urge the President to state the policy and explain the commitment.

I appreciate your attention to this letter, and I look forward to your answers to the several questions raised.

With best regards,

Sincerely,

LEE H. HAMILTON,
Ranking Democratic Member.

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, March 9, 1995.

DEAR MR. HAMILTON: Thank you for your letter of February 22 to Secretary Christopher, in which you pose additional questions about possible U.S. participation in a NATO-led effort to help UNPROFOR withdraw from Bosnia and/or Croatia.

Before addressing your questions individually, I would like to stress that the Administration shares your concern over an UNPROFOR pull-out: like you, we fear withdrawal may contribute to a widening of the war in both Bosnia and Croatia. For this reason, we have undertaken an active diplomatic campaign to convince President Tudjman to allow an international peacekeeping force to remain in his country. Assistant Secretary Holbrooke held meetings in Zagreb March 6 to that end.

Because all the Allies agree that an international force should remain in the region, NATO's planning for assistance to UNPROFOR withdrawal has been conducted on a contingency basis only. NATO has taken care to ensure that laying solid groundwork for possible withdrawal does not imply accession to UNPROFOR's departure. President Clinton has avoided making an explicit statement that the U.S. would help facilitate UNPROFOR withdrawal from Croatia so as not to precipitate a pull-out. Practically speaking, if a situation were to develop in Croatia where no alternative to NATO-led withdrawal appeared feasible, as in Bosnia our Alliance commitments would militate in favor of U.S. participation. But let me emphasize that we do not want this to come to pass, and we are pressing Tudjman to moderate his stance so UNPROFOR does not have to leave and NATO does not have to deploy.

You correctly suggest that UNPROFOR withdrawal from Croatia would significantly complicate the situation for UNPROFOR in Bosnia. Evacuation routes through Croatia that soldiers in UNPROFOR/Bosnia would have to use might be harder to secure if UNPROFOR/Croatia were no longer in place. Also, if the Krajina Serbs tried to prevent UNPROFOR withdrawal from Croatia (as they have sometimes threatened), conflict could spill over into the volatile Bihac area, where Bosnian Serbs might feel compelled to support Krajina Serbs, thus endangering UNPROFOR forces in Bosnia.

Because UNPROFOR's departure from one state may bring it under threat in the other, and in response to President Tudjman's stated wish to end UNPROFOR's mandate on March 31, NATO military authorities have been tasked with updating their contingency Bosnia withdrawal plan to include steps to facilitate withdrawal from both countries. NATO's revised plan is scheduled to be ready in mid-March. We do not yet have NATO's final cost estimates, but a team of budget experts from the Department of Defense, the Office of Management and Budget, the State Department, and the National Security Council travelled to Brussels and to AFSOUTH headquarters in Naples the week of March 6 to study existing figures for Bosnia withdrawal and determine whether figures were available for Croatia. Once NATO has released its revised plan, and we have made preliminary decisions on what our response should be, we will discuss funding options with Congress.

As for troop numbers, NATO has not yet asked member states to indicate possible contributions, nor has it projected troop needs. It is worth noting that a significant number of NATO troops facilitating UNPROFOR withdrawal would be reflagged UNPROFOR contingents from Allies already in the region. As with costs, troop needs for a Bosnia-only operation would be somewhat higher than for a Croatia-only operation, and somewhat lower than for an operation to help UNPROFOR withdraw from both states. Again, once NATO has released its revised plan in mid-March, we will be in a better position to consult with you on possible U.S. troop contributions.

For planning purposes, NATO is calculating personnel and equipment needs under the most adverse circumstances. NATO projects that in facilitating UNPROFOR's departure, it might provide close air support to UNPROFOR troops, as it is already committed to do, and undertake other activities in defense of the international peacekeepers. NATO has no intention of engaging in offensive combat in Bosnia and/or Croatia, or of remaining in the region following an UNPROFOR pull-out.

The pressures you describe on NATO—and thus the U.S.—to become involved in the conflict should UNPROFOR withdraw are real and sobering. Without UNPROFOR, civilian populations will indeed have little protection. International relief organizations will find it difficult to make humanitarian deliveries. Minor conflicts that could be quelled even by the presence of international observers would escalate. Thus, as we note above, it is clearly preferable for UNPROFOR, or a similar international presence, to remain in the region. We are working actively toward that end in Croatia; in Bosnia, the Contact Group is in touch with the various parties to try to prevent a resurgence of fighting, which might provoke UNPROFOR withdrawal. The Administration is also continuing to argue against unilateral lift, the other likely trigger for UNPROFOR withdrawal from Bosnia.

As the situation clarifies itself, we will need to make decisions. We want UNPROFOR to stay, but if an upsurge in fighting threatens the safety of our Allies, we do not intend to leave them stranded. In order to give our diplomatic efforts a chance to succeed, we are not yet making a public case for assistance with an UNPROFOR pull-out. But should there be no alternative, the President will explain to the American people what is at stake: our collective security, as exemplified by mutual commitments to Allies. We trust we can count on your support, and that of the Congress, should we have to undertake an operation to assist our Allies depart from the former Yugoslavia.

We hope this information will be helpful to you and the members of the Committee. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

WENDY R. SHERMAN,
Assistant Secretary, Legislative Affairs.

TRAGEDY IN PAKISTAN

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. MANTON. Mr. Speaker, I rise today to call to the attention of my colleagues an article

which appeared in today's Washington Post. Yesterday, in Pakistan, the brutal ambush of a United States consulate van left two American diplomats dead and a third wounded. These deaths are a constant reminder of the continuation of terrorism in our world. In the last 3 months, more than 437 people have been murdered by religious zealots in Pakistan alone.

This cowardly act of terrorism is an unfortunate reminder that we must work to end these acts of violence. As we enter a new age of peace in many parts of the world, it is important to bring those who continue to terrorize others to justice.

Mr. Speaker, I offer my prayers to the families who lost loved ones in this unspeakable incident. I intend to work closely with my colleagues to investigate this act of terror and bring those responsible to justice.

[From the Washington Post, March 9, 1995]

KARACHI AMBUSH WAS WELL PLANNED

(By Kamran Khan and Molly Moore)

KARACHI, PAKISTAN, MARCH 8.—The ambush of a U.S. Consulate van by masked gunmen who killed two Americans and injured a third at a busy intersection in downtown Karachi, Pakistan, this morning was a "well-planned campaign to create panic and terror" among Americans and other Westerners, according to a Pakistani official.

Today's attack marked the first time terrorists have targeted Westerners after a year of rampant religious, ethnic and political violence that has left more than 1,000 people dead in Pakistan's financial and commercial capital.

In Washington, a senior administration official said one of the two Americans killed was an intelligence agent working under diplomatic cover, but the U.S. government does not believe this was related to the attack.

Instead, the official said, investigators believe the attack was intended as a payback for the U.S. capture in Pakistan last month of Ramzi Ahmed Yousef, the suspected mastermind of the 1993 World Trade Center bombing in New York, or was related to the ethnic violence in Pakistan. The official said there is "no evidence whatsoever" that the assailants knew about the victim's intelligence work.

As Pakistani authorities vowed to launch a full-scale investigation of today's shooting, Karachi police officials revealed that police in a squad car equipped with a rooftop machine gun were at the intersection where the ambush occurred but refused to pursue the attackers' getaway car because they were afraid of being killed.

Both U.S. and Pakistani officials said the attack appeared to be carefully planned and coordinated, although authorities said no group or organization has claimed responsibility. FBI agents were sent to Pakistan today, and Karachi police said the FBI will lead the investigation.

U.S. Consulate officials said Gary C. Durell, 45, a communications technician from Alliance, Ohio, was killed instantly when two gunmen opened fire on the van. Jackie Van Landingham, 33, a consulate secretary from Camden, S.C., died of gunshot wounds after being taken to a hospital. Mark McCloy, a 31-year-old mailroom worker from Framingham, Mass., was scheduled to undergo surgery today for his wounds, Pakistani officials said. The three consulate employees were stationed in Karachi with their spouses and children, according to U.S. officials.

Although officials at the consulate said today that they were taking extra precautions to safeguard personnel, a spokesman said, "they live and work in this community. We've told people to keep their heads down, but we can't build a wall around them." U.S. officials said there are no plans to close the consulate or evacuate family members.

U.S. and Pakistani authorities condemned the assault, which occurred as the van, with an identifying license plate, was driving the three employees to work at the consulate from the diplomatic residential neighborhood at about 7:45 a.m.

"This wanton act of terrorism deserves the severest condemnation," the Pakistani government said. "It is clear that this tragic incident is part of a premeditated plan to create fear and harassment in sensitive areas of Karachi."

In Washington, President Clinton denounced the attack as a "cowardly act." Secretary of State Warren Christopher, arriving in Cairo at the beginning of a visit to the Middle East, said the United States and Pakistan would use "every means at our disposal to bring those responsible for this crime to justice."

The incident came at an awkward time for Pakistani Prime Minister Benazir Bhutto, who is scheduled to visit Washington next month in an effort to improve the uneasy relations between the two countries. Pakistanis have criticized her government for its failure to control the violence in Karachi.

The White House said today the shooting would not affect first lady Hillary Rodham Clinton's scheduled tour of Pakistan, India, Sri Lanka, Nepal and Bangladesh at the end of this month. She will not be visiting Karachi.

The Pakistani government censored reports of the incident carried today by the BBC and CNN television networks and played down the story on the government-controlled national television network.

Details of the attack were pieced together by Karachi police, using reports from witnesses and an account provided to U.S. officials by the Pakistani van driver, who was not injured and immediately drove his wounded passengers to one of Karachi's major hospitals.

According to police, three armed gunmen in a stolen yellow taxi followed the white consulate van for several blocks before opening fire on it with automatic weapons from a distance.

The yellow taxi then swerved in front of the van and cut it off while a red car blocked the van from the opposite side. At least two masked gunmen then stepped out of the vehicles and began firing on the van, shattering its side windows and spraying the windshield with bullets, according to U.S. officials.

As the gunmen fired on the van, traffic constable Tanvir Ahmed, who was at the intersection, spotted the police car with the machine gun approaching from an adjacent lane. Ahmed said he dashed toward the police vehicle and pointed to the yellow taxi, then speeding away.

Ahmed said the officer in charge of the police vehicle responded, "Stupid, shall we get killed by chasing these people?" Police officials, who confirmed Ahmed's account, said the police vehicle did not radio for help, but drove six minutes to its home station to report the incident.

Such a response has not been uncommon among Karachi police. More than 90 law enforcement officials have been killed in Karachi's violence in the past year, including four who were the targets of shooting sprees last weekend.

U.S. diplomats in Pakistan have become sensitive to terrorism as a result of a 1979 attack on the U.S. Embassy in the capital, Islamabad, in which hundreds of Pakistani men stormed the compound and set several buildings on fire, killing four people. The assault stemmed from unfounded rumors blaming the United States for an attack on the Grand Mosque in Mecca, Saudi Arabia, the holiest site in Islam.

Karachi police said several threatening telephone calls have been made to the U.S. Consulate in Karachi in recent weeks.

Karachi police and Pakistani intelligence sources said today they are investigating an Iranian-backed militant Shiite Muslim organization called Sipahae Muhammad (Army of the Prophet Muhammad). Sipahae Muhammad and other Shiite extremists have accused the United States of fanning Karachi's sectarian violence.

TRIBUTE TO THE LEAGUE OF WOMEN VOTERS

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Ms. ESHOO. Mr. Speaker, I rise today to honor the League of Women Voters and all its members who are celebrating this outstanding organization's 75th anniversary. The League of Women Voters is a respected advocate for education, political awareness and the active participation of women in the political process across our country, and provides an essential and valuable service to all Americans.

The League of Women Voters was founded in 1920 as a result of the movement to assure women the right to vote. Since then, it has helped generations of voters understand the structure and function of Government by providing nonpartisan information about candidates and public policy issues. The League of Women Voters has also served the public interest by promoting equality, encouraging voter registration and informed voting, and offering leadership training to women. Thousands of League members throughout the United States devote untold volunteer hours to educate and inform their fellow citizens.

Mr. Speaker, I ask my colleagues to join me today in saluting the extraordinary contributions made by the League of Women Voters. In particular I want to highlight the invaluable work of the many active Leagues in California's 14th Congressional District, including the Bay Area League of Women Voters, the League of Women Voters of Central San Mateo County, the League of Women Voters of South San Mateo County, the League of Women Voters of Palo Alto, the League of Women Voters of Mountain View-Los Altos, the League of Women Voters of Cupertino-Sunnyvale, and the League of Women Voters of San Jose-Santa Clara. I ask my colleagues to join me in celebrating the League of Women Voters' 75th anniversary and thanking them for their continued efforts to promote an informed electorate, the best assurance that our precious democracy will flourish and endure.